

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GOWANUS INDUSTRIAL PARK,  
INC. ,

Pl a i n t i f f ,

- a g a i n s t -

ARTHUR H. SULZER  
ASSOCIATES, INC. ,

D e f e n d a n t .

06-CV-00105 (SJ)(JO)

United States Courthouse  
Brooklyn, New York

Tuesday, May 20, 2008  
9: 30 a.m.

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TRANSCRIPT OF CIVIL CAUSE FOR CIVIL HEARING  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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Proceedings

2

1 (In open court.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: All right. Counsel s, did you wish to  
4 make any statements before we get to the testimony?

5 MR. MALONEY: Since it's a nonjury proceeding,  
6 Your Honor, I have no real opening statement. I would just  
7 note some facts have already been determined by the Judge's  
8 summary judgment order. I would assume they need not be  
9 explored.

10 THE COURT: Okay. Well, just in case there's any  
11 disagreement about that, just let me get a sense of what you  
12 think those facts that are already established are.

13 MR. MALONEY: The primary one being that the barge  
14 was wrongfully withheld after Arthur H. Sulzer, Incorporated,  
15 and Mr. Sulzer identified themselves as its owner. That was  
16 specifically found in Judge Johnson's opinion and so I thought  
17 that was not an issue.

18 THE COURT: You agree; right, Mr. Paykin?

19 MR. PAYKIN: I agree that that's what the decision  
20 says.

21 THE COURT: Okay. That that's what this says? Or  
22 that that's the fact?

23 MR. PAYKIN: I dispute that as...

24 THE COURT: How many times did you get to litigate  
25 it?

R. Henry - Direct / Maloney

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1 MR. PAYKIN: Well, I think there's an appeals  
2 process.

3 THE COURT: I see, but for purposes of today's  
4 hearing I am supposed to accept it as fact; correct?

5 MR. PAYKIN: Correct.

6 THE COURT: Okay.

7 Do you have a witness?

8 MR. MALONEY: Yes, I do, Your Honor.

9 We call Captain Robert Henry.

10 (Witness enters and takes stand.)

11

12 COURTROOM DEPUTY: Please, raise your right hand.

13 C A P T A I N R O B E R T H E N R Y,

14 called by the Plaintiff, having been

15 first duly sworn, was examined and testified

16 as follows:

17 COURTROOM DEPUTY: State your name for the record,  
18 please.

19 THE WITNESS: Robert Henry.

20 THE COURT: Have a seat, Mr. Henry.

21 COURTROOM DEPUTY: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MALONEY:

24 Q Good morning, Captain Henry.

25 Can you briefly tell the Court the nature and extent

R. Henry - Direct / Maloney

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1 of your maritime background and experience?

2 A Started working on a fishing boat as a deck hand, 1965.

3 I have a repair shop, welding since 1971. 1987, I got my

4 Captain's License. 1989, I brought my first tug up from Texas

5 in '89. Since then, I've brought two more up that I operate.

6 So, I have three now.

7 Q So, in your business, you operate three tug boats at this  
8 time?

9 A Yes.

10 Q And what do you do with the tug boats in your business?

11 A I do general towing and salvage work connected with my  
12 diving and my mechanical experience.

13 Q In the course of your business, do you work with barges  
14 and other steel water craft?

15 A Primarily, 95 percent of my business is with barges,  
16 whether they're floating or sunk.

17 Q Do you ever have occasion to charter barges?

18 A On occasion.

19 Q Okay. Did there come a time when you were contacted by  
20 the gentleman who is sitting to the right back there  
21 (indicating), about retrieving a barge?

22 A Yes.

23 Q When was that?

24 A I believe it was towards the late summer of '05, or fall  
25 of '05.

R. Henry - Direct / Maloney

5

1 Q Okay.

2 THE COURT: Could we just have, for the record, the  
3 name of the person you're indicating.

4 THE WITNESS: Arthur Sulzer.

5 Q And had you known Mr. Sulzer before?

6 A No.

7 Q Did he contact you or you contacted him?

8 A He contacted me.

9 Q Right. What did he ask you to do?

10 A He asked me to pick you up a barge in Brooklyn in the  
11 Gowanus Bay and bring it to a shipyard on Staten Island.

12 Q What was the name of the shipyard?

13 A May Shipyard.

14 Q Did he give you any specific instructions about the  
15 operation?

16 A He asked me to get the barge to the shipyard as soon as I  
17 could, at my convenience.

18 And also, he had issues with the people that had the  
19 barge, so not to go on their pier. Just take the barge and  
20 bring it to the shipyard.

21 Q And did you do that?

22 A That's what I did.

23 Q And can you describe the events that, at that time when  
24 you did that.

25 What exactly did you do? How did you approach?

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1 When did you approach? Do you remember the date?

2 A I think it was October. It was third week in October,  
3 towards the end. I believe the date was October 26th or 25th.  
4 I finished the job up in the Brooklyn area and from there,  
5 that night I went by there.

6 I saw the barge. I got the barge. Towed it from  
7 there, after -- I had to release all kinds of steel cables  
8 that were laying all over in the water. I released it from  
9 its holdings and brought it to May Shipyard. Tied it up and  
10 from -- the morning, the shipyard needed the barge for the  
11 morning.

12 Q Now, was the barge attached to the pier there?

13 A It was attached to another barge.

14 Q Was it, was the other barge on the outside of it or the  
15 inside of it?

16 A The other barge was on the inside between the barge that  
17 I got and the pier.

18 Q So, it was the outermost?

19 A Yes.

20 Q How many barges all together?

21 A I believe there were three.

22 Q Okay. And did you go on the pier, physically?

23 A No, I did not have to.

24 Q Did you go on the other barges?

25 A I don't believe so, no. In the course of putting these

R. Henry - Direct / Maloney

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1 steel cables that are laying all over, getting them secured on  
2 the barge, I may have stepped on it. But no, I did not have  
3 to go on it to release anything.

4 Q Now, you mentioned the barge was moored by steel cables.

5 In your experience with barges, is that the way that  
6 barges should be moored?

7 A No, not normally.

8 Q Why not?

9 A Because it's extremely difficult to release a barge under  
10 pressure.

11 Also, sometimes, if there's a electricity on a barge  
12 for pumps or lights, you can create a galvanic action; the  
13 electrolysis. And electrical current will sometimes flow into  
14 the water. It's sea water, it conducts it. And you wind up  
15 having a corrosion problem with barges.

16 Q The barges will corrode more?

17 A Yeah, they'll corrode more rapidly with electricity.

18 Q Is that the kind of that's commonly known in your  
19 business?

20 A Yes, it's a common-known thing not to use cables, you  
21 know. It's not normally done, cables, no.

22 Q Okay. What did you do with the barge after you picked it  
23 up?

24 A Towed it over to May Shipyard, landed it where they  
25 requested it, and that was it.

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8

1 (Pause in the proceedings.)

2 Q Are you, you mentioned earlier that you are familiar with  
3 barge hire rates in the New York area?

4 A Yes.

5 Q Is that -- what is that based on?

6 A Working in salvage business, like I do, on occasion we  
7 need a crane barge or deck barges. And because it's not  
8 something that's constantly needed, I don't normally have them  
9 myself. I hire them as needed.

10 Q So, you yourself and your business will hire barges on  
11 occasion?

12 A Yes.

13 Q So, you're familiar with that business?

14 A Yes.

15 Q In the time frame we're talking about, around 2005, what  
16 would be the daily hire rate for a short-term hire for a crane  
17 barge --

18 A For --

19 Q -- of that size?

20 MR. PAYKIN: Objection.

21 THE COURT: On what grounds?

22 MR. PAYKIN: He hasn't indicated he hired a barge in  
23 that time frame.

24 THE COURT: Do you have any information about the  
25 rates?



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1 THE WITNESS: I have, I have, I've been in contact  
2 with several different dock builders. I've got a letter from  
3 one man that, you know, where he stipulated what the going  
4 rate for barges are. I know it's, I know what the rate is  
5 from calling different people.

6 The rate is pretty uniform. It's pretty standard.  
7 It's who's got a barge available is who you wind up hiring.

8 THE COURT: All right. The objection is overruled.

9 Q So, the question is: In the time frame around 2005, what  
10 would be the daily hire rate for a crane barge of the size  
11 that Mr. Sulzer's barge was?

12 A For short-term hire, meaning for several days,  
13 approximately a thousand dollars a day, plus costs.

14 Q Okay. What about longer term hire?

15 Do you have any knowledge about that?

16 A The price normally comes down a little. Exactly how much  
17 less it comes down, depending on how active the barge will be,  
18 how long the charter is for. That's very specific related to  
19 the cost of it, to what it's doing or not doing.

20 Q If you know, does New York have higher rates or lower  
21 rates than other ports on the East Coast?

22 A They're normally higher. Things in New York are higher.

23 Q Okay. And I guess my last question is, we haven't asked  
24 this yet.

25 The barge that you picked up that night, that was a

R. Henry - Cross / Paykin

10

1 crane barge, wasn't it?

2 A Yes.

3 Q Okay.

4 MR. MALONEY: I have nothing further.

5 THE COURT: Do you remember the name of the barge?

6 THE WITNESS: I believe it was A-D-A. "ADA", I  
7 believe that's what the name of it was.

8 THE COURT: All right.

9 Go ahead, Mr. Paykin.

10 CROSS-EXAMINATION

11 BY MR. PAYKIN:

12 Q Good morning, Captain Henry.

13 A Good morning.

14 Q My name is Joe Paykin. I represent Gowanus Industrial  
15 Park. I have a few questions to ask you.

16 When you picked up this barge, do you know the  
17 condition that it was in?

18 A It looked like it hadn't been used in a while.

19 Generally, it looked like a barge that had been lying for a  
20 long time. It was covered with pieces of rope, steel cable.

21 The phrase for it is housekeeping. The housekeeping on it was  
22 terrible. Signs that it had been sitting.

23 Q But did you notice any unusual rust on the barge?

24 A Well, it had a rusty appearance because it hadn't been  
25 maintained.

R. Henry - Cross / Paykin

11

1 Q And you indicated you work with barges generally.

2 How often should a barge be dry-docked?

3 A Normally, they get dry-docked at least once a year.

4 Q And how often should a barge be painted?

5 A As often as needed. It's steel. It's in the, a salt  
6 water environment. If you have bare steel today, you'll have  
7 rust tomorrow.

8 So, paint, painting never ends. Especially on a  
9 crane barge where you're constantly moving, working heavy  
10 objects. You're scraping the paint off all the time.

11 Q Now, you indicated that this barge was connected to  
12 another barge; is that correct?

13 A Yes.

14 Q And isn't it correct the barge was connected with ropes?

15 A There were steel cables and there were pieces of rope.  
16 The ropes themselves were in very poor condition. So, it was  
17 my belief at the time that they were backed up with these  
18 steel cables and pieces of cable just to keep it from floating  
19 away. That's what it appeared to me to be.

20 Q And how many pieces of steel cable were there?

21 A Quite a few. Four, five different sections of cable.

22 Q And it was connected to another barge with the steel  
23 cables?

24 A Yes.

25 Q And you're certain of that?

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1 A Oh, yes.

2 Q Have you ever -- now, you indicated a short-term lease of  
3 a barge cost a thousand dollars a day; isn't that correct?

4 A Yes.

5 Q Have you ever leased a barge for a thousand dollars a  
6 day?

7 A Yes.

8 Q Have you ever done a long-term lease of a barge?

9 A For a week. Most of my work is in salvage business,  
10 you've either got it done in a week or it's becomes a major  
11 project. It changes its whole complexity then. But normally,  
12 barges I rent for a week.

13 Q So, you don't know what a long-term lease would be; do  
14 you?

15 A To a degree I know because I've priced out several jobs  
16 where long-term lease of a barge would be required for the  
17 job. So, I've talked to different people in the industry over  
18 the years to get a cost, so I could go back to a construction  
19 company or someone and give them an idea.

20 Q And do you know the price of purchasing a barge such as  
21 the ADA?

22 A Price? It depends on the particular barge. It could  
23 start at a hundred thousand, it could go up. You could spend  
24 a million dollars to build a barge.

25 Q But a used barge, a hundred, roughly a hundred feet by

R. Henry - Redirect / Maloney

13

1 30 feet?

2 A With a crane on it and the winches, the anchor winches  
3 that are on it, you probably spend about 200,000, I would  
4 think for a barge in good shape.

5 MR. PAYKIN: Okay. I have no further questions.

6 MR. MALONEY: One question on redirect, Your Honor.

7 THE COURT: Yes.

8 REDIRECT EXAMINATION

9 BY MR. MALONEY:

10 Q Earlier you talked about your observation of the  
11 condition of the barge.

12 In your experience, when a barge is sitting in the  
13 water, does the corrosion occur mostly above the water line or  
14 mostly below the water line?

15 A It can happen in both places. It's very difficult to  
16 gauge what's happening under water without inspection, either  
17 by divers or by dry-docking, but it's certainly an issue that  
18 you have to be on top of.

19 Q Were you able to observe any underwater portions of the  
20 barge when you picked it up?

21 A Not particularly. What you do normally, see on the sides  
22 of the barge that you have these metal attachments called  
23 Zincs. They're bright gray and they're there in place to help  
24 prevent corrosion, this galvanic action, which causes the  
25 steel to rust and rot.

R. Henry - Redirect / Maloney

14

1 Q But were you able to observe any of the underwater  
2 portion of the barge?

3 A No.

4 Q No?

5 A Along the water line, yes.

6 MR. MALONEY: I'm sorry, one more.

7 Q Earlier you mentioned, and you started to talk about it  
8 now, this galvanic action and corrosion.

9 Would that be --

10 MR. PAYKIN: I'm going to object. I didn't go into  
11 this in my cross.

12 THE COURT: Overruled. You can re-cross.

13 MR. MALONEY: I'll rest -- oh, if he can re-cross?

14 THE COURT: Sure.

15 Q Earlier you testified about this galvanic action and its  
16 effect on corrosion on the barge.

17 Would that be something that you could observe on a  
18 barge when it was sitting in the water or would it have to be  
19 up in dry-dock before you could see that corrosion?

20 A Normally, you'd have to dry-dock it to accurately gauge  
21 the corrosion. There are procedures where you could check on  
22 it while it's in the water, there is certain instruments that  
23 can measure the electrical flow around, which is what causes  
24 this galvanic action.

25 Q Okay. But as far as just actually seeing what corrosion

R. Henry - Redirect / Maloney

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1 has occurred, the way to do it would be an inspection in  
2 dry-dock; is that correct?

3 A An inspection in dry-dock or trying to look at these  
4 zincs, which are welded to the outside of the hull around the  
5 perimeter at the water line.

6 Q Okay.

7 MR. MALONEY: I have nothing further.

8 THE COURT: Any re-cross?

9 MR. PAYKIN: No, Your Honor.

10 THE COURT: All right.

11 Thank you, sir. You're excused.

12 THE WITNESS: All right.

13 (Witness excused.)

14 THE COURT: Do you have another one?

15 MR. MALONEY: The next witness is Arthur H. Sulzer.

16 (Witness enters and takes stand.)

17

18 COURTROOM DEPUTY: Please, raise your right hand.

19 A R T H U R H. S U L Z E R,

20 called by the Plaintiff, having been

21 first duly sworn, was examined and testified

22 as follows:

23 COURTROOM DEPUTY: State your name for the record,  
24 please.

25 THE WITNESS: Arthur H. Sulzer.

A. Sulzer - Direct / Maloney

16

1 COURTROOM DEPUTY: You may be seated.

2 DIRECT EXAMINATION

3 BY MR. MALONEY:

4 Q Good morning.

5 Could you briefly tell us the nature and extent of  
6 your maritime background, education and experience.

7 A I'm a graduate of New York Maritime College. I'm a  
8 licensed ship's captain and an engineer. I've gone to sea  
9 most of my life, on and off. I'm a naval reserve officer. I  
10 just retired recently from the Navy Active Reserve Service as  
11 a captain.

12 I'm involved in the family business since I was in  
13 fourth grade, which is basically barge and crane and tug boat  
14 rentals in the Port of Philadelphia.

15 And then, along with that, I do marine surveying and  
16 consulting on the side.

17 Q And tell me more about the family business.

18 What is the nature of the family business? Is that  
19 Arthur H. Sulzer Associates Incorporated?

20 A Yes. My father started the business in about 1964 when  
21 he bought his first barge. We've over the, I guess,  
22 40-something years since then, we've had about 40, 50 barges  
23 in the family. Also, tug boats, crane barges. We basically  
24 rent equipment out to contractors and construction people to  
25 use in construction and marine work.



A. Sulzer - Direct / Maloney

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1 And then, along with that, we've done surveying on  
2 barges and equipment for various hull and classifications  
3 societies. He was a marine engineer and a graduate of  
4 New York Maritime College also, as was my brother. And that's  
5 what the family firm does.

6 He passed away in 2001. And I got reengaged in the  
7 business at that time and have been managing it and operating  
8 it since that time.

9 Q Did there come a time when one of the barges that was  
10 owned by the business was chartered out to CDS Marine?

11 A Yes. In 2000, my father chartered the barge ADA to  
12 CDS Marine in Philadelphia for, it was originally for a  
13 four-month period with the ability for the contractor or the  
14 charter as we call it in the marine field, to be extended.  
15 And they continued to extend it for several years and paid us  
16 on a regular basis.

17 In 2003, the checks were not forthcoming. I had  
18 been called up for the war and was away on reserve duty. My  
19 mother was managing the business at the time. When I got  
20 back, I saw they were in serious arrears and I attempted to  
21 contact them and find out what was going on with the barge.

22 And at that point, basically the letters and  
23 everything were returned from their firm and they went out of  
24 business and I had no way -- I didn't know how to contact them  
25 and I didn't know where the barge was, frankly. And that's

A. Sulzer - Direct / Maloney

18

1 when this whole process and trying to locate it began.

2 Q Okay. Let's go back to the initial charter.

3 Do you remember the what the rate of hire was for  
4 that barge?

5 A I think it was like \$3,100 a month at the time.

6 Q Okay. That's sound a bit less than what Captain Henry  
7 was talking about.

8 Why was it so much less?

9 A The barge was originally chartered to them as a deck  
10 barge in Philadelphia. And at some point in time and I'm not,  
11 I don't know when this happened because my father was running  
12 the business, they converted it to a crane barge. They put a  
13 lot of equipment on it. And that happens often.

14 Oftentimes people will charter a barge and they'll  
15 put extra equipment on and it says you can do that with our  
16 permission, but when you return the barge you either have  
17 to -- you can either remove all the equipment and put it back  
18 the way it was, or you can say okay, we'll leave the equipment  
19 there, or you work out a deal with us saying we made some  
20 improvements, what can we work out with the price of the  
21 barge. So, that's happened quite often that that's what a  
22 contractor does.

23 Q You said you weren't sure exactly when they did that.

24 Were you aware that it was a crane barge by the time  
25 it went missing?

A. Sulzer - Direct / Maloney

19

1 A Yes, I was.

2 Q Okay. I assume that increased its value.

3 Do you have any idea how much it increased the value  
4 of the barge?

5 A Well, that size barge typically in that condition would  
6 probably be worth about a hundred thousand dollars. And with  
7 the crane and all the equipment on, I purchased the barge not  
8 too long after I took over the business and I would put that  
9 up in the \$200,000 range, the way it was outfitted.

10 Q Okay. And what would be the hire rate for a crane barge  
11 like that in the Philadelphia area?

12 A I have a crane barge very similar to that and I get rates  
13 anywhere from 500 to a thousand dollars daily, and that  
14 depends really on the length of the charter. I just had one  
15 out recently for six months and the daily charter hire was in  
16 the neighborhood of \$600 a day.

17 So, again it's a negotiation. If they take more  
18 than one barge, I'll put a package deal together. But  
19 generally, it's in the \$500 to \$700 range.

20 Q You mentioned that you bought another barge. Another  
21 crane barge.

22 Why did you do that?

23 A Well, we've always had crane barges as part of our  
24 service to contractors because we like to offer a complete  
25 package to a contractor. If he's doing a dock or a pier, we'd

A. Sul zer - Di rect / Mal oney

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1 I like to give him all of the equipment. So, that could be  
2 different sizes of barges. It might be a work boat.  
3 Generally, it's a crane barge.

4 So, we didn't have a crane barge since this one had  
5 gone missing, and since that helps you get extra business,  
6 I purchased the barge shortly after I found out that I wasn't  
7 going to get go the release of the ADA in any kind of  
8 foreseeable future. I purchased a crane barge of similar  
9 capacity.

10 Q What the time frame that you made that purchase? When?

11 A I was notified of the individual that had the barge in  
12 January of 2004, and my attorney attempted to contact them and  
13 basically state, hey, we were the owner, could you please  
14 release it. They said no.

15 And so, approximately a month later, when it looked  
16 like that was not going to happen, I had the opportunity to  
17 purchase another crane barge, which I did. And I put that in  
18 service several months later. I had to dry-dock it and paint  
19 it because it's something we regularly do. And I put that in  
20 service in that year, which was 2004, I believe.

21 Q Okay. Let's go back to your conversation in reference to  
22 recover -- efforts to recover the barge ADA.

23 At what point did you find out where the ADA  
24 actually was and how did you find that out?

25 A Well, I knew it was a Brooklyn, but that's really all I

A. Sulzer - Direct / Maloney

21

1 knew. I was told that it was stored at Gowanus Industrial  
2 Park and I had a phone number and a street address, which was  
3 I think 600 Columbus Avenue, which is really not necessarily  
4 where the dock is and we sent a letter up to the owner of that  
5 facility, and I called.

6 When I drove up one day and I asked could you please  
7 direct me to where your facility is, I'd like to inspect my  
8 barge, which we had told you I was going to come up and do,  
9 and at that time it was Mr. Quadrozzi who I actually talked to  
10 on the phone, he said that he would not tell me where the  
11 barge was, he would not let me look at the barge because there  
12 was outstanding claims against the barge. And that that's  
13 where the matter rested.

14 Q What was the time frame of that conversation with  
15 Mr. Quadrozzi?

16 A I believe that was last week in February. Like the 29th  
17 or the 30th. Somewhere in that week.

18 Q Of which year?

19 A Of February 2004.

20 Q Okay. And by then, had you already made a demand for the  
21 return of the barge to Mr. Quadrozzi in writing?

22 A My attorney had sent a letter two weeks prior, shortly  
23 after we finally knew where it was saying, we're the rightful  
24 owners we have documentation to prove that, please allow the  
25 owner to come up and inspect his barge and he'll be calling

A. Sul zer - Di rect / Mal oney

22

1 you, which is what I did.

2 Q Is that the letter that was pre-designated as one of the  
3 Defendant's Exhibits? The letter dated February 17th, 2004,  
4 from Donna Edelsberger?

5 A That's correct. That was my attorney that sent the  
6 letter up, stating that I was the legal owner of the barge.

7 Q Then it was after that, that you actually spoke to  
8 Mr. Quadrozzi and he told you, you could not come and see your  
9 barge on his property?

10 A Yes. It was about ten days later.

11 Q Okay. And the purchase of the replacement barge was  
12 after that conversation?

13 A It was about a month later.

14 Q And why did you purchase that barge again? Just to  
15 clarify.

16 A Well, it's a good source of revenue for our company. And  
17 in addition, it helps my company market several barges and  
18 pieces of equipment to contractors because when they come in  
19 to bid on a job, particularly if it's out of state, I can give  
20 them all of the marine equipment they need instead of having  
21 to go to multiple sources. So, it tends to make me more  
22 competitive.

23 Q Did I ask you the date you purchased that?

24 A I think it was the last part of February -- of March, I  
25 believe.

A. Sulzer - Direct / Maloney

23

1 MR. MALONEY: May I approach the witness --

2 THE COURT: Yes.

3 MR. MALONEY: -- to offer a document.

4 I'm going to have you look at a document that's been  
5 submitted as Exhibit 7 to this inquest.

6 (Handing.)

7 MR. MALONEY: Do you need a copy, Mr. Paykin?

8 MR. PAYKIN: Thank you.

9 MR. MALONEY: And Your Honor, if it's helpful, if I  
10 may I approach, I have a bound copy of all the Exhibits. It  
11 has color copies of all of the photos which are better than  
12 what came in on ECF.

13 THE COURT: Thank you.

14 (Handing.)

15 BY MR. MALONEY:

16 Q I'd like you to take a look at what's been pre-marked as  
17 Exhibit 7 to this inquest, Captain Sulzer, and tell me if you  
18 recognize that document.

19 A Yes. That's the bill of sale for the barge that I bought  
20 at the auction with Alex Lines and Son in Atlantic City.

21 Q Okay. Is that barge that's also a crane barge; is that  
22 correct?

23 A Yes, its.

24 Q Is that similar in size and crane configuration to the  
25 ADA?

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1 A It's pretty close, yeah. It's a little longer. I think  
2 ten-foot longer.

3 Q Okay.

4 A Maybe two-foot wide. Basically the same.

5 Q Did you put this barge into service and charter it out  
6 right away?

7 A No, it had some damage to the bottom of the barge so I  
8 had to arrange with a shipyard locally to repair the bottom  
9 damage. It needed work on the crane so it took several months  
10 until I could get a dry-dock in Philadelphia available and get  
11 all repairs made to the barge.

12 MR. MALONEY: As an aside, Your Honor, do you want  
13 these to be formally introduced?

14 THE COURT: If you'd like me to consider them.

15 MR. MALONEY: Sure. Well, you had the previously  
16 submitted one through the ECF, so I thought they were being  
17 considered on that basis.

18 Not all the exhibits that are submitted are  
19 necessarily going to be discussed today, for example, but I'll  
20 offer it in evidence.

21 And is there any objection?

22 MR. PAYKIN: No objection.

23 THE COURT: Okay. So, that's this one, or all?

24 MR. MALONEY: There are several others.

25 Can we ask if there's an objection to all the



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1 Exhi bi ts?

2 THE COURT: Eight from you and four from the  
3 pl ai nti ff.

4 Do you folks just want to offer them all in and have  
5 them deemed admi tted.

6 MR. PAYKIN: That's fi ne, Your Honor.

7 MR. MALONEY: Fi ne.

8 THE COURT: So, Pl ai nti ff' s Exhi bi ts 1 through 8.  
9 And Defendant' s Exhi bi ts -- I' m sorry. Countercl ai m  
10 Pl ai nti ffs 1 through 8.

11 (Countercl ai m Pl ai nti ff' s Exhi bi ts 1 through 8 were  
12 recei ved i n evi dence.)

13 THE COURT: And Countercl ai m Defendants A through D  
14 are all deemed admi tted.

15 (Countercl ai m Defendant' s Exhi bi t A through D were  
16 recei ved i n evi dence.)

17 MR. MALONEY: Very good.

18 Q When did you -- this barge that you bought was called the  
19 Betty; is that correct?

20 A It was renamed the Betsy. It was originally, I think it  
21 says the WHS-350.

22 Q Okay. I' m going to call it the Betsy.

23 When did you put the Betsy in service and start  
24 chartering it out?

25 A The first charter I got on that, I believe, was

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1 January 28th of 2005.

2 MR. MALONEY: I'm going to -- if I may I approach?

3 I'm going to ask you to take a look at what's been  
4 marked as Exhibit 5 and just introduced into evidence.

5 (Handing.)

6 MR. MALONEY: Do you need a copy?

7 MR. PAYKIN: Thank you.

8 MR. MALONEY: And the cover sheet of course is just  
9 the a cover sheet, but it's five or six pages.

10 Q Could you tell me what that document is?

11 A It's a number of invoices for -- from my company for the  
12 rental of the barge Betsy to various contractors from a period  
13 of, looks like March of '05 or June of '05 to June of '06.

14 So, it was a number of different contractors  
15 different rates for the barge.

16 Q Okay. What kind of rates did you get for the barge down  
17 in Philadelphia?

18 A Well, one's at six hundred a day. Another one's  
19 four-fifty. Another one's six hundred, seven hundred, seven  
20 hundred. So, there are various, you know, subject to  
21 negotiation with a contractor. And you know, as I, sometimes  
22 they took multiple barges, so I gave them a better rate.

23 Q Do you ever charter barges out to the New York area?

24 A No, we don't work in the New York area.

25 Q When you chartered the ADA out to CDS, was that supposed

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1 to have been delivered back to you in Philadelphia?

2 A Yes.

3 Q Let's talk about, we didn't actually get to how you found  
4 out where the ADA was.

5 Could you briefly tell the Court how you came to  
6 know where the ADA was, eventually?

7 MR. PAYKIN: Objection. Relevance. It's already  
8 been established.

9 THE COURT: Overruled.

10 A I knew it was in the Brooklyn Gowanus area, but that  
11 area, it consists of multiple piers and you can't really see  
12 physically where it is from the road. You can't approach the  
13 piers. And so I really didn't actually know specifically at  
14 what dock the barge was at until August of 2005.

15 Q Let me just backtrack.

16 What I'm really asking you is: How did you first  
17 find out where it was at all? It was out there in the world  
18 and you didn't know at all. How did you come to know, after I  
19 guess a year or so back, where the barge was?

20 What mechanism caused you to learn that?

21 A Oh, when the letters of invoice were returned from the  
22 company CDS, I hired a private investigator to find where  
23 their office was and to locate them in Philadelphia, and they  
24 had vanished and disappeared from the scene. At that point in  
25 time, I kind of just asked around the waterfront.

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1 We've been in the business 40 years and I kind of  
2 put the word out that does anybody know what happened to the  
3 crane barge that CDS had? It's not in Philadelphia, I didn't  
4 find it down there. And eventually somebody said, oh, we  
5 think it's up in the Brooklyn area. And they actually gave me  
6 a couple locations on Richmond Terrace.

7 And I drove around looking to try to find this crane  
8 barge. I actually drove up to Richmond Terrace where there's  
9 a lot of barge operators and I tried to drive in and find  
10 places, but most of these are private yards and you just can't  
11 go in that and look for stuff.

12 So, at that point I got a hold of my attorney and I  
13 said we need to file bankruptcy or I guess, I don't know what  
14 the word is, but we filed a lien against CDS in court figuring  
15 that that would give us some information on what was going on.  
16 And eventually, through the bankruptcy attorney in January  
17 of '04, we learned that the barge was at the Gowanus property  
18 up in New York. And that's when we wrote the letter.

19 Q Did you have the exact location of that property and  
20 location of the barge at that time?

21 A No. I had a street address which was 600 Columbus  
22 Avenue, which really is not directly related to where the  
23 barge was. I guess that was a business address that we had of  
24 the company.

25 Q How did you come to eventually find out exactly where the

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1 barge was?

2 A Well, in I think it was in July of '04, after I returned  
3 from Navy duty, I have -- a friend of mine took me out in his  
4 pleasure boat and we cruised around that area looking for a  
5 barge. And we couldn't find it. We looked over in the Erie  
6 Basin, and we looked over in some piers.

7 And actually, people don't let you do that anymore.  
8 After 9/11, people get suspicious of people driving around in  
9 a barge or rather, in a boat. So, we weren't successful in  
10 finding it at that time.

11 Q And how did you eventually find it?

12 A The following year again, I was out to sea a couple  
13 periods with the Navy. Another friend of mine who regularly  
14 goes fishing, I said, I think it's up in the Gowanus Channel  
15 somewhere. Could you go look for it? And I described the  
16 barge.

17 And I said if you see any barges tied up there, it's  
18 got a crane on it and it's got a white house in the back. And  
19 I described it, and he went up there and he said I found three  
20 barges and the one on the outboard side seems to be your  
21 barge. And he described it to me and that's pretty much when  
22 I knew that was it.

23 Q When was that; the month and year?

24 A I think it was August, late August of 2005.

25 Q Okay. And subsequent to that, you hired a gentleman who

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1 just testified before you, Captain Robert Henry, to retrieve  
2 to barge for you; is that correct?

3 A Yes, that's correct.

4 Q Why did you resort to that method?

5 A Well, I wanted my property back. And I frankly, I had  
6 explored other possibilities with some attorneys in New York  
7 and they had basically said, well, the only way you can go  
8 back through the system is to have the barge arrested and to  
9 hire a marshal. And they kind of gave me a cost frame, which  
10 was going to be like \$10,000 or \$20,000 to arrest my own barge  
11 and go through the legal system.

12 And you know, then I came to the conclusion, I said  
13 well, it's clearly my property. I'm entitled to take my own  
14 property back and I went and got it. And there again, you  
15 know, respecting the other person's property, I didn't go on  
16 their property. I just took my own property back, which was  
17 clearly mine.

18 Q Okay. Were you concerned about leaving the barge there  
19 since you hadn't seen it in several years?

20 A I was very concerned. I've been in this business since I  
21 was in fourth grade and barges tend to sink. And in this day  
22 and age, a barge -- particularly a barge outfitted with oil  
23 tanks and a crane with oil -- if that barge would have sunk  
24 and caused a pollution incident, I can assure you somebody  
25 would have contacted me and said you're the owner the barge

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1 you're liable for all this. So, I was very concerned.

2 The other thing is, our barges all operate in the  
3 Delaware River, which is fresh water. Now, we have a regular  
4 policy; we typically dry-dock our barges every eight to ten  
5 years because we're in fresh water. And of course, we monitor  
6 the condition of the zincs on the side and we can replace  
7 those in the water if we need to.

8 Once I knew the barge was up here in New York  
9 Harbor, which is salt water and brackish water, I was  
10 particularly concerned with the condition of the barge. Just  
11 as a matter of fact, the last time we had hauled the barge to  
12 paint it was in 1999, just before it went out for charter in  
13 2000. And so, it wasn't many years, it was only a couple  
14 years later; but again, it wasn't in fresh water. So, I did  
15 have some concerns about the condition of the barge and not  
16 having seen it.

17 Q And so, you were worried about your own liability should  
18 the barge sink or pollute or anything like that?

19 A As a legal owner, I have to register my barges. Every  
20 year the Army Corps of Engineers sends me a document that  
21 lists all my barges and what I have to do is say I'm still the  
22 legal owner. And if I sell a barge, or cut it up for scrap,  
23 or give it away, I have to tell the Army Corps of Engineers  
24 who that barge went to because just like with cars, you know,  
25 they don't want barges and marine equipment abandoned all over

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1 the harbor for somebody else to have to clean up or whatever.

2 So, they very much regiment the ownership of barges now.

3 Q You mentioned that the Army Corps of Engineers actually  
4 keeps track of barges.

5 Does that mean that someone who had an unidentified  
6 barge and wanted to know who really owned it could call up the  
7 Army Corps of Engineers and find out?

8 A They could to that. Some barges have numbers welded into  
9 the hull and some don't. If the number is registered, that's  
10 with the Coast Guard. So, if you went on a barge for instance  
11 that was laying on the side of the river and you found a  
12 number in there, you could go to the Army Corps or the  
13 Coast Guard and say barge 37550 was abandoned here, who owns  
14 it? And they can tell you.

15 Q Did the ADA have a number?

16 A No, she did not.

17 Q Okay. Would they be able to identify it by name?

18 A The name is one indication. Of course, what I have to do  
19 is tell them the dimensions and the construction of it and the  
20 equipment. So, it's not the easiest thing in the world, but  
21 certainly there are ways to do that.

22 Q Okay. Let's go back to your decision to have  
23 Captain Henry retrieve the barge for you.

24 This was some months after Mr. Quadrozzi had told  
25 you that you could not come in and see it or look at it; is



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1 that correct?

2 A Yes, it was quite a few months later.

3 Q And the reason for the delay was that you still didn't  
4 know when it was until you said summer of '07 when a friend of  
5 yours with a pleasure boat actually took a tour around and  
6 found it for you?

7 A Actually, I really didn't know physically whether the  
8 barge, where it was until August of '05.

9 Q And then you had it retrieved?

10 A Didn't even know it could be retrieved until August '05,  
11 when he described it as the outboard barge.

12 Q And then it was October of '05 you retrieved it?

13 A Yes.

14 Q Or had the Captain retrieve it.

15 Two months may not be a big delay, but why did it  
16 take two months? Why don't you do it the following week?

17 A I don't have any marine resources in New York Harbor.  
18 I'm not familiar with tug boat operators up here. It wasn't  
19 the kind of a job that you could just call a big company like  
20 MacAlister and say get this barge.

21 So, what I did was I asked one of my associates in  
22 Philadelphia, did they know a small -- also there's cost  
23 involved, too. You know, a big tug boat costs you a lot of  
24 money. And I asked an associate did he know of any small  
25 operators that were good. And I also wasn't totally sure of

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1 the condition of the barge. It could have been partially  
2 sunk. So, you know, I wanted somebody that had some expertise  
3 that was going to get it out of there no matter what.

4 And my associate gave me the name of Mr. Henry. A  
5 called him up, I said I have a barge I'd like to you go and  
6 retrieve in Brooklyn and would you do the job for me. And he  
7 agreed.

8 Q And Captain Henry had salvage experience.

9 Was that one of the reasons you picked him?

10 A Yes, because I knew he was get the job done no matter  
11 what problems he ran into.

12 Q And what did you instruct him to do with the barge once  
13 he retrieved it?

14 A I made arrangements with May Shipyard because again, not  
15 having seen the barge in five or six years, before I attempted  
16 to tow it to Philadelphia, which is also a Coast Guard  
17 requirement -- they want to see barges have been inspected  
18 before they'll allow you to tow a barge -- I made arrangements  
19 with May Ship to take it over there and dry-dock it for me so  
20 that if I had to make any repairs or do anything, I could do  
21 that. So, that's why I asked him it take to May Ship.

22 Q So, it was taken right away to May Ship?

23 A Yes.

24 Q Was it dry-docked right away?

25 A No, actually they had some other customers that came in

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1 and they actually had to delay it until like late December.

2 And then actually, then I had to go out to sea with the Navy,

3 so I was away for two months.

4 So, we agreed that they would store it for me until

5 March of '06. And then, when I came back from my Navy duty,

6 they dry-docked the beginning of March.

7 Q Okay. And was it, in fact, dry-docked in March?

8 A Yes, it was.

9 Q Were you present when this was dry-docked?

10 A Yes, I was.

11 Q Okay. Did you have a look at the hull of the barge?

12 A After they dry-docked it.

13 The barge obviously -- again, salt water tends to  
14 have marine growth, barnacles and seaweed and all that grows  
15 much better in salt water than fresh water. So, it would very  
16 much coated with seaweed. So, I said I wanted the barge  
17 sand-blasted, which is where they blast off all of the marine  
18 growth and see what was under there.

19 And when they did that, all of the seams on the  
20 barge were completely corroded away. You could actually see  
21 into the hull of the barge. So, I'm actually astounded that  
22 the barge didn't sink at the dock given its condition. The  
23 only thing that kept the water out was the seaweed.

24 Q You mean you could see right through the opening in the  
25 hull?

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1 A Yes.

2 Q Where were these openings in the hull? Were they just in  
3 the middle of the plates? At certain spots? Where were they?

4 A No, every one of the welded seams on the, what they call  
5 the turn of the bilge or the wrapper plate, that's where the  
6 horizontal side meets the vertical bottom, it's generally a  
7 rolled plate that's attached and they're welded together.

8 Every one of those on the port and the starboard  
9 side and the bow and the stern in the area of the weld, which  
10 is about three feet, was corroded away. The plates were fine.

11 Q Why does it get corroded on the welds like that?

12 A That basically came from galvanic action or corrosion.

13 Typically, you have two types of problems with a  
14 barge. You have oxidation which we know is rust, that occurs  
15 as a result of air and water and steel above the water. And  
16 then you have corrosion, which is a result of electrolysis of  
17 electrons traveling from the water to the steel and back to  
18 the water again. They are constantly flowing through the  
19 metal.

20 Q So, this electrolysis caused the welds and not the plates  
21 of steel but the weld themselves, to be eaten away by the  
22 corrosion?

23 A That's correct. One of the things you need for  
24 electrolysis is two dissimilar metals. Now, that can be  
25 aluminum and steel, but it can also be steel and steel. If

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1 they're not identical to each other, there is a difference.

2 And a weld is obviously a different type of metal  
3 than the steel plates. So, typically the welds are more  
4 active. And active means that they tend to attract electrons.  
5 So, welds are typically where your corrosion is going to  
6 occur.

7 Q How do you prevent that kind of corrosion from occurring  
8 along the welds?

9 A Well, the first thing you do is you paint the bottom of  
10 the barge periodically. You make sure the paint's on there to  
11 protect it, the steel, from coming in contact with the water.

12 The second thing you do is you put what they call  
13 anodes or sacrificial anodes on there. This is a metal that  
14 has a greater activity or reactivity to the electrons and  
15 steel. What that does is, the electrons from the water travel  
16 into the steel on the barge and they go to the cathode first,  
17 which is a lower value steel, and then they go to the anode  
18 which is more active.

19 So, if you put a zinc on there, instead of going to  
20 the weld, they'll go to the zinc. And then, they'll pull the  
21 zinc plate away as they travel back into the water. So, it's  
22 just almost like a wearing process.

23 Q Did this barge had zincs on it?

24 A It had two little ones that were remaining, yes.

25 Q How many was it supposed to have?

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1 A I don't know the exact number that was on there. I mean  
2 there's a formula; there's so much space of the zinc for so  
3 much area of the barge under water, and I'd have to look it  
4 up.

5 Typically, like I replaced 16 zincs on this barge,  
6 is what the shipyard told me would be an appropriate number to  
7 put back. I put 16 back.

8 Q Okay. Now, we talked about painting and the zincs as a  
9 way of preventing this electrolytic corrosion. What about the  
10 mooring techniques?

11 Is it there anything you can do to prevent corrosion  
12 with the mooring?

13 A Well, electrons and electricity can come from two  
14 sources. Obviously, you can't prevent the electrons coming  
15 from the water.

16 Another problem, particularly in old piers -- and  
17 this occurs even with anything in the ground -- is there's  
18 electricity in the ground all around piers and everything  
19 because of wires that are frayed or broken. And the  
20 electricity goes into the ground and it finds pipes and metal  
21 and it travels around.

22 So, one of the things you never want to do long-term  
23 is tie any kind of marine structure to a pier in a metal  
24 bollard because what you're basically doing is throwing a  
25 switch. And that direct current that's running around the

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1 piers goes right from the bollard, to the cable, onto the  
2 barge. It flows through the barge, it takes some the metal  
3 away and goes into the water.

4 Q You say it flows through the cable.

5 Couldn't you tie it up with rope and then it would  
6 be okay?

7 A Well, that's why you don't use cable, other than in the  
8 very short period of time or an emergency.

9 Or sometimes what they'll do is they'll take steel  
10 cables and they'll actually put them onto what they call a  
11 snotter, which is a very heavy piece of rope. And the rope  
12 breaks the pathway from the steel cable to the dock because  
13 obviously, you know, electricity can't go through rope.

14 Q Obviously, you didn't see this barge when it was tied up  
15 at the Gowanus Industrial Park dock, but Captain Henry told us  
16 earlier it was tied up with steel cables. And I believe  
17 Mr. Quadrozzi admitted as much in his deposition.

18 Would you attribute this extreme corrosion to the  
19 fact it was tied up with steel cables?

20 MR. PAYKIN: Objection.

21 THE COURT: On what basis?

22 MR. PAYKIN: He's talking about what Mr. Quadrozzi  
23 said at his deposition.

24 MR. MALONEY: I withdraw that part.

25 THE COURT: All right. That's withdrawn.

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1 Any other objection?

2 MR. PAYKIN: Could you repeat the question?

3 THE COURT: Why don't you start the question again.

4 MR. MALONEY: I'll start the questions again, a  
5 little shorter.

6 Q Based on what Captain Henry testified, that this barge  
7 was tied up with steel cables, and based on what you observed  
8 with the extreme corrosion along the welds once you blasted  
9 away the marine growth, would you believe there's a causal  
10 connection between those two events? Those two things?

11 A Absolutely. That was the major cause. I've never seen a  
12 barge this corroded, consistently, in my entire 40 years of  
13 doing barges. Every weld was corroded. Every one.

14 Q Did you have any kind of a second set of eyes or surveyor  
15 when you when you looked at that barge?

16 A Well, I was on a very short time frame to get the barge  
17 done. And so, after I saw this, I basically called somebody  
18 that was local that I could bring down, and asked them to  
19 survey the barge along with me and to verify that this is what  
20 happened. Because obviously we were welding the welds up and  
21 we were trying to get the barge back in the water.

22 So -- yes, I did. I'm sorry.

23 Q Okay. Were any pictures taken when you and the  
24 additional person looked at it?

25 A Yes, we did take pictures.



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1 Q Okay.

2 MR. MALONEY: I'd like to approach the witness with  
3 Exhi bi t 3.

4 THE COURT: Yes.

5 (Handi ng.)

6 MR. MALONEY: And I'd like you to take a look. Not  
7 so much at the first two written pages, but at the two pages  
8 of color photos attached. I don't believe you have the color  
9 ones.

10 Q And could you tell the Court what those photos are and  
11 what they mean?

12 A Well, as soon as you blast the barge and take the  
13 remaining paint ant seaweed off you want to paint it right  
14 away. If you don't it will continue to rust. So, what you  
15 typically do is put a first coat of paint on.

16 So, the one picture shows basically, the open seam.  
17 You can see the holes into the barge. Those little black  
18 holes there.

19 Q Let me just interrupt you.

20 You say one picture. You're talking about the first  
21 page with two photos on it?

22 A Yes.

23 Q Okay. And you mean the one on the right?

24 A The one on the right, it says open seam. You can see  
25 basically the holes through the barge. And then, on the

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1 left-hand side, you can see where it's been re-welded up.

2 Q Okay. Are these pictures that you took or somebody with  
3 you took?

4 A I took these pictures.

5 Q Okay. Anything else in there that's significant?

6 A On that page?

7 Q Well, yeah. On that page.

8 What's the significance of the fact that it's a  
9 welded seam?

10 A Well, the weld is the dissimilar metal. That's why the  
11 corrosion occurs at the welds and not the plates.

12 Q Okay. Now, did you have all this fixed when you were at  
13 May Shipyard?

14 A Yes, I did.

15 THE COURT: Is there anything I was supposed to see  
16 on the second page of photographs?

17 THE WITNESS: Well, the second page you can see two  
18 photos of the barge when it was first dry-docked. You can see  
19 the marine growth and the matting and the corrosion that's on  
20 there in the first upper two pictures.

21 And then, at the lower two pictures, you can see how  
22 many seams there were. That's an indication at the bow area  
23 that the seams, because they bend the plate basically every  
24 two or three feet, and you can see the extent of the weld. We  
25 basically had to go from above the water line right around to

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1 the bottom plate. And that occurred basically all around the  
2 whole barge.

3 Q You talk about that right photo.

4 Is that the marine growth you see on the bottom of  
5 the hull there?

6 A Yes.

7 Q And essentially, that's what was keeping it from sinking?

8 A Yes.

9 Q And did you have all that repaired in May Shipyard?

10 A Yes, I did.

11 MR. MALONEY: I'd like to show you another document  
12 that's been marked as Exhibit 4.

13 (Handing.)

14 Q And I'll ask you if you can tell me what that is.

15 A That's the bill from May Ship to dry-dock and repair the  
16 barge ADA.

17 Q And did you pay this bill?

18 A Yes, I did.

19 Q Okay. How much of this bill would you say is  
20 attributable to the corrosion that occurred because of the  
21 mooring, the prolonged mooring, with steel cables?

22 A Well, number nine is the principle amount of weld that  
23 had to be done on the welds, which is \$12,000.

24 And there's some miscellaneous work, for instance,  
25 removing the skegs. And there's some hull plates that, you

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1 know, could possibly have been aggravated with the corrosion,  
2 but the welds are the major part of this bill.

3 Q And the welds, is that item nine on the bottom there?

4 A Yes.

5 Q Okay. So, all told, your repair costs as a result of  
6 this extreme corrosion were how much?

7 A Probably in the maybe \$15,000, \$16,000 of this bill was  
8 related to that.

9 Q Okay. Would you say the rest was, to put it in simple  
10 terms, for your account not really damages you're claiming in  
11 this lawsuit?

12 A Yes, the sand-blasting and the dry-docking and all that,  
13 I would have done that whenever I got my barge back.

14 Q Okay. Now, earlier you talked about having bought a  
15 barge to essentially replace the ADA when you realized you  
16 weren't going to get it back.

17 That's the one that you renamed the Betsy?

18 A Yes.

19 Q And we looked at Exhibit 5 and the rates you charted on  
20 there.

21 Is it fair to say you would be able to charter out a  
22 barge if you owned a crane barge year-round or would it be a  
23 portion of the year? What's the percentage of time that you'd  
24 have one chartered out? I know it's going to be variable.

25 A I'd certainly like to charter out for a whole year and I

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1 have chartered some barges out for a year. I think the Betsy  
2 was recently out for eight months out of the year. So,  
3 typically somewhere in the six, seven months range would be a  
4 good year for chartering a barge out.

5 Q Okay. And the ADA was withheld from you.

6 I believe, you spoke to Mr. Quadrozzi you said, in  
7 February of '04?

8 A Yes.

9 Q And you got in back in October, late October of '05?

10 A Yes.

11 Q So, 20 months?

12 A Approximately.

13 Q Okay. So, a fair estimate, if you had had that barge  
14 during that time, how many months do you think you would have  
15 been able to charter it out?

16 A I would say half of that time at least.

17 Q Ten months?

18 A Ten months.

19 Q And what was the average rate of hire that you probably  
20 would have gotten for that?

21 A In New York? In where?

22 Q Actually, well, tell me in New York and tell me in  
23 Philadelphia.

24 A Well, I don't really rent barges out in New York. So, I  
25 wouldn't want to say that.

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1 MR. MALONEY: Strike that question.

2 A In Philadelphia, an average of \$600 a day for a barge in  
3 Philadelphia, had I had the barge there.

4 Q Six hundred a day, 30 days a month, ten months?

5 THE COURT: 180,000.

6 MR. MALONEY: You beat me to it. You've got that  
7 for the record; a judicial calculation.

8 Okay. I have nothing further, at this time.

9 THE COURT: All right. Mr. Paykin?

10 CROSS-EXAMINATION

11 BY MR. PAYKIN:

12 Q You testified earlier that your business always had a  
13 crane barge; isn't that correct?

14 A Yes.

15 Q But you also testified earlier that the ADA was your only  
16 crane barge; is that correct?

17 A No.

18 Q Prior to the Betsy, did you have any other crane barges  
19 besides the ADA?

20 A Yes.

21 Q And what was that crane barge?

22 A I don't really remember the name. We've been in business  
23 almost 40 years. So, I don't remember the names of the other  
24 crane barges we've had over the years.

25 Q But you indicated that when the ADA was out of your

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1 possession, you didn't have another crane barge; isn't that  
2 correct?

3 A I wasn't in the business in 2001. So, in 2003, when I  
4 took over the business, the ADA was our only crane barge, you  
5 know.

6 I think my father had sold some other crane barges  
7 previously. I don't really remember -- I don't know what he  
8 did in the business at the time.

9 Q But, from 2003 until you purchased the Betsy, other than  
10 the ADA, your company didn't have any other crane barges;  
11 isn't that correct?

12 A That's correct.

13 Q Now, you also testified that when you leased the ADA to  
14 CDS Marine it wasn't a crane barge; is that correct?

15 Isn't that correct?

16 A Yes.

17 Q So, your statement that your company always wanted to  
18 provide full service to different industries is incorrect  
19 because you actually did not have a crane barge from 2003  
20 going forward; isn't that correct?

21 A I had the ADA.

22 Q But the equipment on the ADA was not yours; isn't that  
23 correct?

24 A Yes.

25 Q You testified that when they returned it, they were

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1 supposed to take that equipment off; isn't that correct?

2 MR. MALONEY: Objection.

3 A No, I testified they had the option to take the equipment  
4 off or they could have worked something out with us and said  
5 we'll leave the equipment on, make a rate adjustment.

6 We've operated barges for almost 40 years. I don't  
7 even have access to all the records over the years. But  
8 typically, we usually had a crane barge available in  
9 Philadelphia. I do not -- I wasn't working with my father  
10 last couple years in the business. And I don't really know  
11 when he disposed of his last crane barge before he got the  
12 ADA.

13 The ADA was also only out, supposedly, on a  
14 four-month charter and that kept getting extended. So, you're  
15 asking me to make some statements about a business that I was  
16 not running.

17 Q Okay. Now, you just said that if they left the cranes on  
18 the barge, CDS, when it returned it to you, the rate would be  
19 adjusted; isn't that correct?

20 A Yes.

21 Q The rate would be adjusted downward; isn't that correct?

22 A No. They would have, had two options. They could  
23 have --

24 Q Just answer the question.

25 THE COURT: I thought he was trying to answer the



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1 question. Let's see what he has to say and then if he hasn't,  
2 you'll ask him another one.

3 A Let's just say, for argument's sake, that CDS called me  
4 up and said, we're done with the ADA, we'd like to return it.

5 I would have gone down, inspected the barge and seen  
6 they'd made a lot of changes to the barge, added a lot of  
7 equipment. At that point I would have said, okay -- and the  
8 contract states that more or less -- you can return the barge  
9 to me when you take all your equipment off the barge and put  
10 it back in the condition it was when it was started.

11 They might elect to say to me, well that's going to  
12 cost us a lot of money, we'd rather leave the stuff on there.  
13 And do you have an objection? And that happens quite often,  
14 they'll but an extra bit on, they'll hang some tires, they'll  
15 do something. And I'll say, no, you can leave the  
16 improvements onto it, that's fine with me. Or I'll say no,  
17 that's improvement to you is a disadvantage to me.

18 I just had that recently happen where they used one  
19 of my barges to move some aircraft and they put all these  
20 cleats on the deck. And I said you have to take them off.  
21 They said why? I said, they're a tripping hazard and it gets  
22 in the way of other people using it. So, they came down and  
23 took them all off. But others times they might have been in a  
24 place where they didn't hurt anything, so I said leave them.

25 In the case of CDS, again, you're asking me -- I

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1 don't know what I would have said to remove and what I would  
2 have said to leave. They might said to me, what about the  
3 crane? I might have said, well, I don't really want the  
4 crane. Or yeah, I can use the crane. Okay, here's X dollars  
5 for the crane or the fact that you now owe me \$45,000 in back  
6 rent -- which they did when they went bankrupt, they were in  
7 hole -- I said basically, I'll take the crane and the  
8 improvements as an offset to what you owe me. And that's what  
9 would have happened in the case of CDS, if they had come  
10 forward.

11 Q But you testified the equipment CDS put on the barge  
12 raised its value from approximately \$100,000 to \$200,000; is  
13 that correct?

14 A Yes.

15 Q So, assuming that CDS had paid and hadn't gone into  
16 bankruptcy, they would have gotten credit for that on the  
17 barge; correct?

18 A No, because that doesn't mean that I'm going to give them  
19 a hundred thousand dollars for those improvements.

20 I said that a crane barge of that size with that  
21 equipment is in the \$200,000 range. I didn't say that I was  
22 going to write them a check for all that stuff on my barge for  
23 a hundred thousand dollars because there's lots of stuff on  
24 there I have no use for.

25 Q But, in reality, your barge was not a crane barge.

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1           You took equipment that didn't belong to you; is  
2 that correct?

3 A     I didn't take anything.

4 Q     Did you reach a deal with CDS that transferred title of  
5 that equipment on the barge to you? To your company?

6 A     I would have liked to, but they went underground. I've  
7 never had any contact with CDS.

8 Q     And what is the rate for, to rent out the ADA if it does  
9 not have the equipment on it that it presently has?

10 A     About \$3,500 a month. For a deck barge.

11 Q     And you're aware that Gowanus Industrial Park as a claim  
12 against CDS Marine?

13           MR. MALONEY: Objection.

14 A     No, I don't, I'm not aware of that.

15           THE COURT: Overruled.

16 Q     So, what you're testifying is, the equipment that  
17 CDS Marine put on that barge raised its monthly rates from  
18 about \$3,500 a month to \$21,000 a month; isn't that correct?

19 A     Yes.

20 Q     Now, earlier you testified that your attorney sent a  
21 letter to Gowanus Industrial Park on February 17th, '04 asking  
22 to allow to you inspect the barge; isn't that correct?

23 A     Yes.

24 Q     And then you testified that you went to inspect the barge  
25 and you were refused admission to the premises; is that

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1 correct as well?

2 A Yes.

3 Q Isn't it correct that the letter of your attorney, dated  
4 February 17th, '04, stated that you were coming to pick up the  
5 barge?

6 A I have to read the letter, but that was, you know, was  
7 probably the words she used. I didn't write the letter.

8 Q Didn't you, in fact, go to pick up the barge, not to  
9 inspect the barge?

10 A No, I went to inspect the barge.

11 (Discussion held off the record.)

12 (Pause in the proceedings.)

13 THE COURT: The February 17th letter is Exhibit C.

14 MR. PAYKIN: I have here the February 17th, 2004,  
15 letter that we just referred to.

16 Q I'd like you to review it and tell me if it indicates  
17 that you were going to pick up the barge or to inspect the  
18 barge.

19 MR. PAYKIN: May I approach?

20 THE COURT: Yes.

21 (Hanging.)

22 A It says I would like to pick up the barge as soon as  
23 possible.

24 Q Does it anywhere state that you wanted to inspect the  
25 barge?

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1 A No. It doesn't.

2 Q Did you provide my client with insurance when you wanted  
3 to go on to his property to look at the barge?

4 A I would have been happy to if he had asked, but when I  
5 called him on the phone, I asked, I requested that I could  
6 come in and inspect my barge.

7 I certainly couldn't arrange to pick up a barge  
8 without knowing its condition or how it was tied up or  
9 anything. And I mean, that was the purpose of my visit to  
10 New York; was to ascertain the condition of the barge and then  
11 I would have made appropriate arrangements. Had he said to me  
12 you need to provide me with insurance, you need to do any of  
13 the following, I would have been happy to comply. He did not  
14 ask me for any of those things, verbally or in writing.

15 Q Based on this letter, wouldn't it be reasonable for my  
16 client to believe that you were coming to pick up the barge,  
17 not inspect it?

18 MR. MALONEY: Objection.

19 A No.

20 THE COURT: Sustained.

21 A I didn't write this letter. If I had written the letter,  
22 I would have used a different words. I would have used I  
23 wanted to come and tow the barge. This was written by my  
24 attorney, who is an attorney that used words, okay? That's  
25 not what I would have put down.

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1 Q Since you retrieved the A-D-A, or the ADA you call it,  
2 how many days has it been rented out?

3 A It hasn't been rented out at all.

4 Q Now, you indicated earlier that you had a long-term lease  
5 on the Betsy for about four months; is that correct?

6 A I think it was six months, but yes.

7 Q Six months.

8 And what rate did you get on that long-term lease?

9 A I think it was about six hundred a day.

10 Q Now, you provided in your submissions a bunch of  
11 contracts or invoices for the leasing of the Betsy.

12 None of them were for a six-month time period; isn't  
13 that correct?

14 A Those are invoices. That's not charter parties. Okay?  
15 Invoices is a bill that you send at the end of month. I  
16 didn't provide the charters.

17 The charters are a written agreement that I enter  
18 into with whoever's going to rent the thing. It will say four  
19 months, six months, a year, and it can go on and on. I have  
20 charter parties. That's not what I put in there, though.

21 Q But the invoices that you provided have specific time  
22 frames; four days, 60 days.

23 So, they seem to indicate a little bit more than  
24 just monthly invoice; isn't that correct?

25 A Well, they're, again -- well, you don't bill on a month.

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1 A calendar month. For instance, I'll look at the very first  
2 one. Riverside Construction, okay? They chartered the barge  
3 from February 27th to March 29th. Well, that was 33 days.  
4 So, that was, they returned the barge at the end of 33 days  
5 and I just billed them for 33 days.

6 Q And you're referring to which invoice? 2005-19?

7 A No, 2006-04. The very first one.

8 Q Okay. But each one of these invoices has a particular  
9 time. It seems to indicate the extent of the hire period.

10 I'm looking at 2006-02. Two says: Charter hire for  
11 the period 2/27/06 through 3/29/06. 33 days?

12 Is this just a monthly invoice?

13 A That's a monthly. I'd have to look at, I don't remember  
14 each one of these things.

15 For instance, I'll give you another one which is a  
16 better example. 2006-20, which is about the third or fourth  
17 one in there. The Bayside Marine Construction. Okay? That's  
18 one of the earliest invoices.

19 Those people had the barge for about six months.  
20 And they actually had the barge chartered out to I think June  
21 of '07. So, this is just one of a whole series of invoices  
22 that my attorney asked me to provide to give an indication of  
23 typical daily rates. I can give you all of the invoices for  
24 Bayside Marine Construction, which is about seven or eight  
25 months, but I didn't put them all in there. That wasn't my

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1 intent.

2 Q When was the repair work completed on the ADA?

3 A March of 2005.

4 Q And so, from March --

5 A Excuse me, March of 2006.

6 Q So, from March of 2006 until May of 2008, that barge has  
7 not been chartered; is that correct?

8 A That's correct.

9 Q But you indicated earlier that typically you rent your  
10 barges out for about ten months out of -- I believe you said  
11 about half the time, six months out year ask that what you  
12 said?

13 A Yeah, the problem I have right now is the ADA's in  
14 New York. Okay? I operate a company in Philadelphia. The  
15 crane barge that I rent out on a regular basis is in  
16 Philadelphia. I now have two crane barges. Okay? It was  
17 never my intent to have two crane barges. I don't need two  
18 crane barges. My business doesn't sustain that.

19 I bought the Betsy to replace the ADA which I could  
20 not retrieve or get ahold of. My dilemma now is two barges.  
21 The reason that the ADA is still in New York is I'm trying to  
22 sell the barge because it's superfluous to my business needs  
23 right now.

24 Q Well, you keep testifying that you bought the Betsy to  
25 replace the ADA. But at the time you bought the Betsy you had



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1 no reason to believe that when the ADA was returned to you it  
2 would be a crane barge; isn't that correct?

3 A No, I knew it was a crane barge.

4 Q No, but the equipment on it wasn't yours. You had no  
5 reason to believe that CDS Marine would not take the equipment  
6 off the barge; isn't that correct?

7 MR. MALONEY: Objection.

8 THE COURT: Overruled. I'd like to hear the answer.

9 A I had every reason to believe they weren't going to take  
10 the equipment off. The first reason is, they owed me a lot of  
11 money.

12 Secondly, they were defunct and no longer in  
13 business. And had vanished. There was nobody to take  
14 equipment off the barge. It was de facto, it was left on my  
15 barge.

16 THE COURT: I'd like to interrupt with a question.

17 Just as a matter of clarification, under the  
18 agreement that you had with CDS, did it the equipment become  
19 yours if they didn't take it off?

20 THE WITNESS: That's standard practice. It didn't  
21 say that in the contract, but typically, if you leave  
22 something on, you know, the barge at the end of period, either  
23 you need to remove it or -- I've done this, Your Honor, I have  
24 done this over 40 years and I can't remember each  
25 circumstances. But many times, as I said, people will put

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1 another cleat or bi t or something on the barge.

2 We do an off-hi re, which means you i nspect the barge  
3 before you go out --

4 THE COURT: You don' t have to go through the whole  
5 thi ng.

6 That' s the standard practice?

7 THE WITNESS: Yes. And we would have arrived at  
8 some agreement.

9 THE COURT: Okay.

10 THE WITNESS: Had I been able to speak to them, we  
11 would have arrived at some agreement.

12 MR. MALONEY: Your Honor --

13 Q But at the time you purchased the Betsy --

14 THE COURT: Excuse me.

15 Is there an objection?

16 MR. MALONEY: Yeah, i t' s not an objection. I want  
17 to know something for the record that' s very relevant.

18 THE COURT: You' ll get a turn.

19 MR. MALONEY: Okay.

20 THE COURT: Go ahead.

21 Q At the time you purchased the Betsy, you did not know  
22 whether or not the ADA would be returned with the crane on i t;  
23 i sn' t that correct?

24 A I did know i t would be returned with the cane. Because  
25 CDS was gone. They had di sappeared. Vani shed. There was

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1 nobody at CDS.

2 If I had picked my barge up in February when I found  
3 its location, I would have had a crane barge that I would have  
4 started operating as a crane barge because I certainly wasn't  
5 going to take equipment off and stick it where? Give it to  
6 who? There was nobody. They were gone.

7 Q CDS was in bankruptcy --

8 THE COURT: Why don't you move on?

9 Q Now, you indicated that typically, you lease your barges  
10 for use in the Delaware River in fresh water; isn't that  
11 correct?

12 A Yes.

13 Q Have you done any work in salt water with barges?

14 A Yes.

15 Q And what's the difference in the rate of corrosion  
16 between salt water and fresh water?

17 A It's significant. I'm not a corrosion expert and I can't  
18 tell you. I don't like renting barges in salt water. It  
19 basically -- I'll be honest, too; if I rent a barge in salt  
20 water for a long period of time, I would probably change the  
21 rate because I would have to dry-dock that barge more often.

22 If I operated in New York as a barge operator, I  
23 would probably dry-dock my barge no later than every five  
24 years. In Philadelphia I can get away with ten years.

25 Q And the ADA was initially, the last time it had been

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1 dry-docked, you testified, was in 1999; isn't that correct?

2 A Yes.

3 Q And when you finally dry-docked it, it was in '05; isn't  
4 that correct?

5 A Yes.

6 Q So, that was more than five years; isn't that correct?

7 A It was close.

8 Q Well, '99 to '05 is six years?

9 A It's close.

10 Q So, based on your knowledge, if you had been leasing your  
11 barges into salt water environments, it would have been  
12 overdue to be dry-docked; isn't that correct?

13 A I didn't know where the barge was. Okay? As I explained  
14 earlier, after my father passed away, I didn't get back in the  
15 dry receipt of the company until 2003, after my reserve duty  
16 was up. I didn't know where the barge was. I thought it was  
17 in Philadelphia. CDS was in Philadelphia.

18 It wasn't until actually 2004 that I found out the  
19 barge was in New York. So, I couldn't have answered that  
20 question. I was concerned. Very concerned about the  
21 condition of the barge being up here in New York that long.

22 Q Right. No, I recognize that.

23 What I'm saying is, is that if you had known it had  
24 been in salt water, you would have pulled it out after five  
25 years, is what you testified?

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1 A That's an approximation. I'm just saying, and I'm saying  
2 I could ask ten different barge owners how often they dry-dock  
3 their barges and they'll give you ten different answers. A  
4 lot depends on the activity.

5 If you've got a welding machine and you're doing a  
6 lot of electrical work on a barge, that tends to introduce  
7 stray electrical currents to the barge. It depends on where  
8 you have the barge docked. If it's next to a pier -- for  
9 instance, the side of the barge facing a steel pier will tend  
10 to have more corrosion evidence than the side of the barge  
11 facing away from the steel pier.

12 There's a thousand different variables as to what  
13 causes barges to deteriorate. It depends on the type of  
14 paint. You know, there's a lot of different variations.

15 (Pause in the proceedings.)

16 Q So, from the time you purchased the Betsy, you didn't  
17 have any work for the ADA; is that correct?

18 A From the time...

19 Q You testified you only needed one crane barge; isn't that  
20 correct?

21 A Right.

22 Q So, once you had the Betsy, you did not miss any leasing  
23 opportunities because you didn't have control of the ADA; is  
24 that correct?

25 A Once I put it in service, yes. When I bought the Betsy,

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1 I had two crane barges. Okay? Unfortunately, I couldn't put  
2 the Betsy into service immediately because she needed work and  
3 repair. And that took several months.

4 MR. PAYKIN: I have no further questions.

5 THE COURT: Any redirect?

6 MR. MALONEY: I actually have no redirect.

7 The point I wanted to raise is a legal one that was  
8 not briefed by either side and that is; that the bankruptcy  
9 trustee in the CDS bankruptcy abandoned all those barges  
10 mistakenly believing they were the property of CDS.  
11 Therefore, the crane would have been abandoned.

12 I don't want to pursue this point here it's not the  
13 appropriate time.

14 THE COURT: No, it's not.

15 MR. MALONEY: I would request the opportunity for  
16 some post-inquest briefing.

17 THE COURT: We'll discuss that later.

18 No redirect?

19 MR. MALONEY: No redirect, but --

20 THE COURT: If there's no redirect, let me continue  
21 with this hearing, if I may.

22 MR. MALONEY: May I do one more direct question?

23 THE COURT: Of this witness?

24 MR. MALONEY: Yes, I'll explain why.

25 THE COURT: Just ask your question, sir.

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1 MR. PAYKIN: I have an obj ecti on.

2 THE COURT: To what?

3 MR. PAYKIN: To him asking questi ons that I di dn' t  
4 raise on my cross.

5 MR. MALONEY: You' ll get another opportunity to  
6 cross.

7 THE COURT: Okay. Had he asked it earlier, it would  
8 have been okay; correct?

9 MR. PAYKIN: Correct.

10 THE COURT: What' s the probl em now?

11 MR. PAYKIN: Because he stopped hi s di rect.

12 THE COURT: What' s the probl em now? Are you going  
13 to be prejudi ced in any way i f he asks thi s questi on?

14 MR. PAYKIN: I don' t know what the questi on i s goi ng  
15 to be.

16 THE COURT: Excuse me, i f he asks the questi on then  
17 you have an opportunity to cross, are you going to be  
18 prej udi ced?

19 MR. PAYKIN: I don' t know the answer. I might have  
20 formul ated my cross di fferently.

21 THE COURT: Let' s fi nd out.

22 MR. PAYKIN: Wel l --

23 THE COURT: Seriously; you tel l me i f thi s woul d  
24 have affected your cross. We' ll stri ke al l of the  
25 cross-exami nati on testi mony and you can start again. Okay? ?

1 DIRECT EXAMINATION (Continued)

2 BY MR. MALONEY:

3 Q My question is this: Earlier you discussed ways you  
4 could prevent this electrolysis damage.

5 Is there any way you can monitor the electrolysis  
6 damage that might be occurring to a moored barge?

7 A I have, I have a piece of equipment we use regularly to  
8 check barges just so see if they're properly protected by  
9 cathodic protection. It's called an Electro-Meter or a  
10 corrosion meter. A lot of different names.

11 And what you can do with this thing is you actually  
12 put it in the water, you put a probe in the water and you  
13 attach the metal to the barge and it gives you an electrical  
14 reading. It will tell you whether the barge is not having  
15 current pass through or whether it is.

16 What I would have done, had I gone up to New York, I  
17 would have had that meter with me. I would have been appalled  
18 at the condition of the cables. I would have been very upset.  
19 I would have put the meter in and then I would have found out  
20 I was having problems. I probably would have said take the  
21 cables off -- there was a lot of things I would have done  
22 immediately, so.

23 Q Is that kind of meter a portable item or is it something  
24 you install on the barge?

25 A It's portable.



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1 Q Is there one in this courtroom?

2 A Yes, it's on the table.

3 MR. MALONEY: I'll indicate that that's a  
4 demonstrative Exhibit. I'll leave it up to the Court to  
5 decide if the Court wants to inspect it any further.

6 THE COURT: Anything further?

7 MR. MALONEY: I'm finished.

8 THE COURT: Would that have changed your  
9 cross-examination?

10 MR. PAYKIN: No.

11 THE COURT: Okay. Do you want further  
12 cross-examination?

13 MR. PAYKIN: Two questions.

14 THE COURT: Please, as much as you like.

15 CROSS-EXAMINATION (Continued)

16 BY MR. PAYKIN:

17 Q Did you ever request Gowanus Industrial Park to test the  
18 barge with the meter you just described?

19 A No.

20 Q And did you ever request Gowanus Industrial Park to check  
21 the anodes on the ADA?

22 A No.

23 MR. PAYKIN: No further questions.

24 THE COURT: All right. I have a couple of questions  
25 and, of course, Counsel on both sides will have an opportunity

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1 to follow up if you think it's appropriate.

2 EXAMINATION BY

3 THE COURT:

4 THE COURT: I don't know if I have it in the record,  
5 what was the purchase price of the Betsy?

6 THE WITNESS: I think it was 105,000.

7 THE COURT: And Counsel, do you know; do I have that  
8 in the record?

9 MR. MALONEY: I believe that you don't because the  
10 bill of sale is an Exhibit, but I don't believe the bill of  
11 sale reflects the purchase price.

12 THE COURT: Right.

13 Oh, when you spoke to Mr. Quadrozzi you said when;  
14 in about February or March?

15 THE WITNESS: February 28th.

16 THE COURT: All right. Did you ask him for the  
17 location of the vessel?

18 THE WITNESS: Yes, I did.

19 THE COURT: And what did he tell you?

20 THE WITNESS: He said I'm not going to tell you.

21 THE COURT: All right. Was there anything further  
22 to that conversation?

23 THE WITNESS: No. Really, I'm not going to tell you  
24 and you can't visit the barge. It was a long time ago and you  
25 know, but I remember that because I was sort of shocked.

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1 THE COURT: All right. You talked about exploring  
2 the possibility of with attorneys of having marshals arrest  
3 the vessel.

4 THE WITNESS: Yes.

5 THE COURT: And you said that they told you that  
6 process would cost you about ten to \$20,000?

7 THE WITNESS: Yes. I guess there's a certain fee to  
8 arrest the barge.

9 THE COURT: Correct.

10 THE WITNESS: And I guess you have to pay the  
11 marshal or somebody to sit down there and keep an eye on it.  
12 I'm not sure exactly how that goes.

13 THE COURT: Did they give you, these attorneys, an  
14 estimate of the time it would take?

15 THE WITNESS: They said it takes a long -- it was a  
16 firm of Mahoney & Keane and they said it takes a long time.  
17 And it's going to be expensive to do that.

18 THE COURT: Did they give you any estimate of how  
19 long a long time is?

20 THE WITNESS: No. They might have said a couple of  
21 months, I think.

22 THE COURT: And how much did Captain Henry charge  
23 you for his services?

24 THE WITNESS: It was \$3,000.

25 THE COURT: All right. That's all I had, gentlemen.

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1 If there's any further follow-up?

2 MR. MALONEY: I have none.

3 MR. PAYKIN: There are certain Exhibits that were  
4 entered into evidence, bills. There's been no testimony about  
5 them. Again --

6 THE COURT: Is there follow-up?

7 MR. PAYKIN: No.

8 THE COURT: All right.

9 Thank you, you're excused, sir.

10 THE WITNESS: Thank you, sir.

11 Should I give these to somebody?

12 THE COURT: Leave them there.

13 (Witness excused.)

14 THE COURT: And Counsel on both sides, if there are  
15 legal issues you want to take up, or housekeeping about  
16 Exhibits, we'll take this up once -- we don't need to waste  
17 the time of the witnesses. But you're not, I'm not asking you  
18 to give up any arguments you want to make.

19 MR. MALONEY: I have a third and final witness, Your  
20 Honor. Captain Joseph Ahlström.

21 THE COURT: All right.

22 I'm sorry, did you folks want to take a break?

23 (Discussion off the record.)

24 (Pause in the proceedings.)

25 THE COURT: Yes, let's take five minutes and we'll

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1 start at 11:30.

2 (Recess taken.)

3 (In open court.)

4 THE COURT: All right.

5 MR. MALONEY: We call Captain Joseph Ahlström.

6 (Witness enters and takes stand.)

7

8 COURTROOM DEPUTY: Please, raise your right hand.

9 C A P T A I N J O S E P H A H L S T R Ö M,  
10 called by the Plaintiff, having been  
11 first duly sworn, was examined and testified  
12 as follows:

13 COURTROOM DEPUTY: Please, state your state your  
14 name for the record.

15 THE WITNESS: Captain Joseph Ahlström --  
16 A-H-L-S-T-R-O-M.

17 COURTROOM DEPUTY: Thank you.

18 THE COURT: Have a seat, please.

19 You may enquire.

20 MR. MALONEY: One second, Your Honor.

21 Did you take those Exhibits?

22 COURTROOM DEPUTY: There they are (indicating).

23 MR. MALONEY: Then we're all set.

24 DIRECT EXAMINATION

25 BY MR. MALONEY:

1 Q Captain Ahlström, could you briefly tell the Court the  
2 nature and extent of your maritime education and experience?

3 A Yes. I'm a, I graduated from SUNY Maritime. I went to  
4 sea, I advanced to the rank of captain. I was captain for  
5 about six years. Then, I took a job at SUNY Maritime as a  
6 professor teaching maritime.

7 THE COURT: Captain, I'm just going to ask you to  
8 speak up a little louder and a little slower for the sake of  
9 our court reporter.

10 THE WITNESS: Yes, sir.

11 A I went to sea for about 15 years. My last five years  
12 mostly as captain. I came ashore. I was appointed assistant  
13 professor at SUNY Maritime. I rose to the rank of professor  
14 department chair as captain of the training ship for three  
15 years.

16 And I do consulting on the side with my free time  
17 from teaching. And I'm also a captain in the Navy Reserve.

18 Q And could you very slowly tell the Court what kind of  
19 background you have with barges in particular?

20 A Barges. I teach barges as a professor. I work as a  
21 consultant for KC Marine and Warwick Maritime. That's my  
22 experience with barges.

23 Q Okay. Did there come a time when you assisted in an  
24 inspection of the barge ADA, the barge that is the subject of  
25 this dispute?

1 A Yes.

2 Q And did you write a report about that inspection?

3 A Yes. That's the report dated March 9th, 2006. The owner  
4 of the barge called me. I came down and took a look at it in  
5 May Shipyard.

6 Q And is that second page of Exhibit 3 with the name  
7 Captain Joseph Ahlström on top? Is that a true copy of your  
8 report?

9 A Yes.

10 Q Okay. Now which parts of that report relate to the  
11 damage that would have been caused by the mooring with steel  
12 cables?

13 A Well, a lot of this damage could have been done by  
14 oxidation, as Captain Sulzer spoke about earlier.

15 But the one that I'm most concerned about is the  
16 welds, the ones that he said that had worn away that we could  
17 look right into the barge where we could see sunlight. And  
18 those are limited by zinc anodes put on the sides of barges at  
19 certain distances. And you can actually see them on outboard  
20 motors. Because when you have a barge in water, you have free  
21 electrons that cause the corrosion.

22 And the way that the barge had appeared to me, I was  
23 like, this is you know, where are the zinc anodes? And we  
24 looked around and I think we found two. And that's basically  
25 what happened.

1           And if what Captain Henry states is true, that it  
2 was tied up with cables, that would give them, it would give  
3 it the conductivity through the salt water into the barge to  
4 cause that corrosion.

5       Q     No, in your report, which of the numbered items one  
6 through five relate to that kind of corrosion?

7       A     I would say definitely four. Four would be the major  
8 thrust of that argument.

9       Q     Okay. What about five; the welded seams? Is that --

10      A     Yes.

11      Q     Okay. Turning to the next two pages, there are some  
12 photographs.

13           Were you present when those photographs were taken?

14      A     Yes, I was.

15      Q     Do these photographs represent an accurate picture of  
16 what the barge looked like when it came up out of the water?

17      A     Yeah, I was contacted on March 9th to do the survey. I  
18 came down and told Captain Sulzer when I got to the dock, I  
19 don't have a camera. He says, I've got one. I said, we'll  
20 use yours. And I went around and he took the pictures.

21      Q     Based on your experience in the maritime industry, would  
22 you say that the \$12,000 that Captain Sulzer attributed to the  
23 corrosion damage out of the, I guess, total \$35,000 bill is  
24 about a fair apportionment?

25           MR. PAYKIN: Objection. He's not qualified. He



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1 hasn't been declared an expert.

2 MR. MALONEY: We can have --

3 THE COURT: I've been receiving opinion testimony  
4 from him, but do you wish to voir dire his qualifications?

5 MR. PAYKIN: I would like to do so, yes.

6 THE COURT: Go ahead.

7 VOIR DIRE

8 BY MR. PAYKIN:

9 MR. PAYKIN: You indicated that you're a professor  
10 at SUNY Maritime; is that correct?

11 THE WITNESS: Yes, sir.

12 MR. PAYKIN: And you indicated you've been a  
13 captain of -- you were at sea for 15 years; isn't that  
14 correct?

15 THE WITNESS: That's correct.

16 MR. PAYKIN: And were you in charge of repair of any  
17 of the vessels that you were at sea with?

18 THE WITNESS: I oversaw the repair and dry-dock,  
19 yes.

20 MR. PAYKIN: And you did use outside services to do  
21 it or did you repair them in-house?

22 THE WITNESS: The engineer would contract outside  
23 services and then I would monitor their progress.

24 MR. PAYKIN: And what is -- you indicated you went  
25 to Maritime. You did not state what your degree is in.

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1 THE WITNESS: Marine transportation.

2 MR. PAYKIN: So, do you have any engineering  
3 background?

4 THE WITNESS: Not academically.

5 MR. PAYKIN: So, regarding oxidation reactions, you  
6 don't have any formal training; is that correct?

7 THE WITNESS: As a chief mate, I've seen it very  
8 well and I've prevented oxidation. I'm very familiar with  
9 oxidation. I teach oxidation to the cadets and how to prevent  
10 is it.

11 MR. PAYKIN: You teach a class called oxidation?

12 THE WITNESS: Negative. No. I teach a class called  
13 seamanship.

14 MR. PAYKIN: So, you indicated you teach oxidation.  
15 What does that mean? What does that encompass?

16 THE WITNESS: Well, oxidation is when air -- rust.  
17 Rust on a ship and how do you prevent a ship from rusting.

18 You have to scrape it. You have to chip it, you  
19 have to red lead it, prime it and then you put paint on it,  
20 which was indicated previously. And that paint is a covering  
21 will prevent oxidation.

22 MR. PAYKIN: Okay. I'm okay with him as an expert  
23 on repair of the boat.

24 THE COURT: Very well.

25 You may continue, Mr. Maloney.

1 MR. MALONEY: Thank you.

2 DIRECT EXAMINATION (Continued)

3 BY MR. MALONEY:

4 Q My question to you was out of the I think it was about  
5 \$36,000 repair bill to May Ship repair, Captain Sulzer  
6 testified that he would attribute about \$12,000 of it to  
7 replacing of those old welded seams to the particularly  
8 extreme corrosion that occurred along the welds.

9 Do you think that's a fair estimate of the  
10 apportionment?

11 A Yes.

12 Q Okay. Co you believe that this barge, having seen it  
13 after it came out and was sand-blasted, could safely have been  
14 towed anywhere outside the New York Harbor?

15 A It's an un-inspected barge, so the Coast Guard doesn't  
16 need to inspect department -- well, it does if it has to be  
17 moved. I've dealt with Coast Guard inspections on barges with  
18 KC Marine.

19 In answer to your question: No, I don't think so.

20 Q Even aside from the Coast Guard inspections, would it be  
21 good seamanship to pick up and tow it back to Philly?

22 A No. I think Captain Sulzer indicated, if anything had  
23 happened, his liability would be humongous. It's a situation  
24 where any sort of environmental catastrophe, he would be in  
25 serious trouble. To move that barge in that condition.

1           The fact that Captain Henry moved it to May Shipyard  
2 is a tribute to his seamanship.

3       Q     Earlier, I believe it was Captain Sulzer, testified that  
4 once the marine growth was blasted away, you could actually  
5 see openings into hull.

6           You could right into the hull; is that correct?

7       A     Yes.

8           MR. MALONEY: Okay. I have nothing further.

9           THE COURT: Cross?

10       CROSS-EXAMINATION

11       BY MR. PAYKIN:

12       Q     You testified just a few minutes ago about ways to  
13 prevent oxidation.

14           Could you restate those ways that you prevent  
15 oxidation?

16           THE COURT: I recall it. Why don't we just -- if  
17 there's another question, by all means. But it was very  
18 briefly, a very short time ago. I recall it.

19           MR. PAYKIN: Okay.

20       Q     One of those methods was to paint the barge; is that  
21 correct?

22       A     Yes.

23       Q     And a barge in salt water, how often would you recommend  
24 it be painted?

25       A     Once a year. It needs to be dry-docked. It needs to be

1 what they say -- shaved. It needs to be cleaned off of all  
2 growth on the hull, primed and painted.

3 Q So, if this barge had not been dry-docked or painted  
4 since 1999, wouldn't that be a great contributor to the  
5 oxidation or the deterioration of the welds that you found?

6 A Well, yes. Again, I go back to what I just said. I'm  
7 thinking more of ships.

8 But definitely, a barge needs to be dry-docked and  
9 inspected. And certainly your comment if it's painted, it  
10 would have prevented oxidation, yes.

11 Q And did you notice the material that was used on the  
12 welds that had deteriorated?

13 A The seams.

14 Q The seams, correct.

15 A Right.

16 Q Did you notice what material was used?

17 A It was metal that was deteriorated. And that, what  
18 happens is the electrons go and they rust away that metal so  
19 it comes clean.

20 Q Right. But in an oxidation reaction, if you have two  
21 different metals -- for instance, aluminum and steel -- that  
22 will accelerate the oxidation; isn't that correct?

23 A No. No. I think that's why I -- again, this is  
24 corrosion. This isn't oxidation.

25 Corrosion is the electrons that come in there and

1 waste away the metal. Oxidation is a different process.

2 There's two processes here. Oxidation and corrosion.

3 Q Okay. And what do you believe caused the damages to this  
4 barge; corrosion or oxidation?

5 A Corrosion. On the ones that we talked about earlier, it  
6 was corrosion.

7 Q And would paint have prevented that corrosion?

8 A To a degree, not completely. That's why you need the  
9 zinc anodes like you see on outboard motors and on ships  
10 around the keel for some reason. But certainly there were no  
11 anodes and I believe that's why the corrosion occurred.

12 Q There were no anodes or two anodes?

13 A Two anodes left. Two anodes.

14 Q And could you tell by looking at the barge how many the  
15 barge once held?

16 A Captain Sulzer stated it was 16. I think a barge that  
17 size would be anywhere between 12 and 20, depending on what  
18 its used and where it's serviced.

19 Q And what's the life, typically, of anode?

20 A It depends on exact -- again, I think we went into this  
21 quite a bit. It depends where it's used, is it close to a  
22 metal dock? There's a lot of variables there. There's why we  
23 do inspections.

24 Q Now, if this barge was tied by a rope to another barge,  
25 which was then tied by a rope to another barge, and that barge

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1 was then secured to a pier, a wooden pier by a metal cable, in  
2 your opinion, is such a mooring dangerous?

3 Would that cause additional corrosion to the barge  
4 all the way at the end?

5 A No, I think Captain Sulzer stated that a lot of barges  
6 are towed by tugs with cables, steel cables, but they use rope  
7 to break that flow of electrons. Electrons can't pass through  
8 rope.

9 In my opinion, and again, it depends if there's  
10 cables in the water near it. The rope would limit it.

11 Q Now, if the pier was not -- if the pier was not put into  
12 metal, if the pier was just straight into the earth, and the  
13 cables were not in the water connecting to the pier, and again  
14 you're now -- there's three barges secured out. So you have  
15 barge one, barge two and then the ADA.

16 So, if the ADA's roped to barge to, two, barge two  
17 is roped to barge one, and barge one is steel cabled to a pier  
18 which doesn't have any metal it, in your estimation, does that  
19 promote corrosion as a structure?

20 A The, again, it's a variable question. The rope will  
21 limit. It has to be touching the barge, the cable. And I  
22 believe the cables, as Captain Henry stated, were on the  
23 barge.

24 Q I'm asking you a hypothetical, as an expert.

25 Hypothetically, if that barge was roped to the next

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1 barge, does that --

2 A It's limited, if any.

3 Q Now, you indicated the corrosion, \$12,000 of the  
4 corrosion of the repairs, you deemed to be as a result of not  
5 having anodes; is that correct? And having steel cables?

6 A The corrosion, however it occurred -- and I assume it was  
7 by the anodes -- then that, to repair that, the seams was  
8 about \$12,000; correct.

9 Q But corrosion occurs naturally even if there were anodes;  
10 isn't that correct?

11 If a barge is sitting in the water for six years in  
12 salt water, not moving, there's going to corrosion; isn't that  
13 correct?

14 A If it's sitting for six years and there's no anodes, yes,  
15 there will be corrosion.

16 Q And what if it was sitting for six years and there were  
17 anodes?

18 A There would be limited corrosion. There wouldn't be as  
19 much as we saw. And again, if any; depending on what type of  
20 the dock and a few other variables.

21 Q So, you could put a barge in water, salt water, for six  
22 years with anodes and there would be no corrosion, is what  
23 you're testifying to?

24 A No, I'm not saying that.

25 Q So, you really don't know how much of the corrosion was



1 attributable to the lack of anodes versus not being serviced  
2 for six years; is that correct?

3 A Well, I do know what causes it. And again, we're not  
4 talking an exact science here. That's why they dry-dock and  
5 do inspections.

6 Anodes limit corrosion. And again, as  
7 Captain Sulzer stated, I never saw a barge with holes at that  
8 same spot along the seams. There were no anodes. That caused  
9 the problem.

10 Q Now, could that corrosion have been the result of the  
11 welding being done improperly in the first place?

12 A It's a possibility. I mean, it's a very slight possibly,  
13 but I don't see how, but yeah. That could be, yeah.

14 Q Did you inspect the welding to see if it had been done  
15 properly?

16 A I assume the barge had been floating and working safely  
17 for those years. I think that type of corrosion usually would  
18 come out in a couple of the first voyages if it was done  
19 incorrectly. It would become apparent early on.

20 Q Didn't we have testimony earlier that it only becomes  
21 apparent once you sand-blasted all the growth off the barge?

22 A Yes, we did.

23 Q So, it wouldn't have been apparent; would it?

24 A Well, no. I mean before 1999, before that time, it's  
25 when the barge was put into service. If there were problems

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1 with the welds and the seams, we would have had problems right  
2 away.

3 Q Well, we don't know if the barge had been rewelded in  
4 1999; do we?

5 A No.

6 MR. PAYKIN: I have no further questions.

7 THE COURT: Any redirect?

8 MR. MALONEY: No redirect.

9 THE COURT: All right.

10 Thank you. You are excused.

11 (Witness excused.)

12 THE COURT: Any further witnesses?

13 MR. MALONEY: No. The counter-claimant rests.

14 THE COURT: Okay. Mr. Paykin?

15 MR. PAYKIN: I call John Quadrozzi, Junior.

16 MR. MALONEY: I would like to request my client's  
17 presence at Counsel table during this phase.

18 THE COURT: Any objection.

19 MR. PAYKIN: I'd rather not.

20 THE COURT: Aside from preferences, do you have an  
21 objection?

22 MR. PAYKIN: I don't because --

23 THE COURT: Just answer.

24 MR. PAYKIN: There's going to be discrepancies  
25 between their testimony.

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1 THE COURT: Mr. Paykin, this is a very simple  
2 question. You've told me what you'd rather. I don't know if  
3 that's a legal objection or not.

4 I'm just asking: Are you objecting?

5 MR. PAYKIN: I am objecting.

6 THE COURT: Okay. On what grounds?

7 MR. PAYKIN: I believe that there are discrepancies  
8 between the my client's testimony and his testimony and they  
9 had their opportunity to take John's deposition. And they, I  
10 think it's improper to have --

11 THE COURT: Do you anticipate calling anyone  
12 further?

13 MR. MALONEY: No.

14 THE COURT: So, you don't want Mr. Maloney with his  
15 client by his side to help him prepare his cross-examination;  
16 is that it?

17 MR. PAYKIN: Yes, correct.

18 THE COURT: What's the basis for my precluding that?  
19 Do I have authority do that?

20 MR. PAYKIN: I'm not aware of any, no.

21 THE COURT: So, I would be exceeding my authority  
22 if I did that?

23 MR. PAYKIN: I don't know if you're exceeding your  
24 authority. I think you could do it discretionary since I  
25 didn't have my client at my side.

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1 THE COURT: Did you wish to have him by your side?

2 MR. PAYKIN: I would have liked it.

3 THE COURT: Why didn't you have him by your side?

4 MR. PAYKIN: I thought it was the Court's policy  
5 that we didn't.

6 THE COURT: When did I tell you that?

7 MR. PAYKIN: You asked if we wanted the witnesses  
8 out of the room.

9 THE COURT: You said no.

10 MR. PAYKIN: I said no.

11 THE COURT: Sit down.

12 Do you want your client with you?

13 Mr. Paykin, you've never asked me to have your  
14 client with you, in the gallery, somewhere else. I asked you  
15 if you wanted witnesses excluded, you said no.

16 MR. PAYKIN: Right.

17 THE COURT: If you didn't want your client by your  
18 side, that was your business. If you wanted him there, I  
19 don't know why you didn't have him there. But I certainly  
20 didn't do anything.

21

22 COURTROOM DEPUTY: Please, raise your right hand.

23 J O H N Q U A D R O Z Z I, J R.,

24 called by the Defense, having been

25 first duly sworn, was examined and testified

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1 as follows:

2 COURTROOM DEPUTY: State your name for the record,  
3 please. You may be seated.

4 THE WITNESS: John Quadrozzi.

5 COURTROOM DEPUTY: Spell your last name.

6 THE WITNESS: Q-U-A-D-R-O-Z-Z-I.

7 COURTROOM DEPUTY: Thank you, you may be seated.

8 THE COURT: You may enquire.

9 DIRECT EXAMINATION

10 BY MR. PAYKIN:

11 Q Mr. Quadrozzi, did there come a time when the ADA barge  
12 was docked at a facility which you controlled?

13 A Yes.

14 Q And when was that?

15 A I'm not exactly sure of the time frame.

16 Q And how did the ADA come to be docked at such facility?

17 A CDS Marine had docked it there.

18 Q And why did they do it there, to your knowledge?

19 A They were going to be hired to do some work at our  
20 facility and that was their equipment.

21 Q And what happened after the ADA was docked at such  
22 facility?

23 A In respect to?

24 Q What happened to CDS Marine?

25 A Oh. They, at some point they disappeared.

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1 Q And they left the barge; is that correct?

2 A Yes.

3 Q Did they attempt to come retrieve the barge?

4 A No.

5 Q Did you attempt to have them come retrieve the barge?

6 A Yeah.

7 Q And what happened?

8 A They did not.

9 Q And was this barge then left under your care?

10 A It was left, yes, for -- and we were forced to care for  
11 it.

12 Q And what was the size of this barge?

13 A It's about a hundred-foot barge in length. I don't know  
14 the beam.

15 Q Did you have concerns that this barge could damage  
16 anything?

17 A Yes.

18 Q And what were those concerns?

19 A It was in inclement weather and so forth. The barge had  
20 broken loose several times because they weren't really moored  
21 properly by CDS Marine. So, we had to retrieve them, stop  
22 them from breaking our property, our neighbor's property.

23 Q Could a barge this size have broken loose and caused  
24 substantial damage in your estimation?

25 A Yes.

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1 Q So, after the barge broke loose a few times, did you take  
2 steps to secure it so that it would not break loose?

3 A Yes.

4 Q And how did you secure it?

5 A We would refasten the lines. There was one time we  
6 actually had to hire a tug boat in a storm to bring it over.

7 Q And how was it fastened?

8 A You mean physically?

9 Q Correct.

10 A Ropes and cable.

11 Q And what was it fastened to?

12 A It was, there were three barges. This barge, I believe,  
13 was on the outside. Each one was nested to the other with  
14 ropes and they were, the one that was against the dock was  
15 held by cables, which was operated by a winch. And that winch  
16 is what we would use to bring it in, if it had pulled away  
17 from the took or loosened up.

18 Q So, any steel cables used were connected to a winch; is  
19 that correct?

20 A Yes.

21 Q Were any steel cables connected to the ADA?

22 A Not that I'm aware of.

23 Q And what was the winch sitting on that this steel cable  
24 was connected to?

25 A It was on the deck barge that was against the dock.

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1 Q And what was the cable secured against?

2 A This was a, this was a pier that wasn't operational. So,  
3 it was just, it had no cleats on it. There were no metal  
4 cleats or fasteners, so it was just tied around the wooden  
5 piles.

6 Q And what are the wooden piles based in?

7 A They're wooden piles on the dock. They're driven into  
8 the mud.

9 Q Is there any metal on those wooden piles?

10 A No. No, only fasteners, but basically this was a wooden  
11 dock.

12 Q Was there anything else between the barges?

13 A There are what you referred to as fenders. They're  
14 rubber balls that float in the water.

15 And also, rubber tires are hung between them to keep  
16 them from banging together and so that when you tighten them,  
17 you can hold them fast to one another without them touching  
18 one another.

19 Q Did you ever speak to Mr. Sulzer?

20 A No.

21 Q Do you have an office at Gowanus Industrial Park?

22 A There's physically, at Gowanus Industrial Park, there is  
23 an office trailer.

24 Q Do you work out of that office trailer?

25 A Sometimes, yeah.



J. Quadrozzi, Jr. - Direct / Paykin

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1 Q Is there a receptionist there?

2 A There's a security and security personnel and people that  
3 tend to paperwork there, yes.

4 Q Did Mr. Sulzer ever call you and request to inspect the  
5 barge?

6 A No.

7 Q To your knowledge, did Mr. Sulzer ever call anybody at  
8 Gowanus Industrial Park and ask them to inspect the barge?

9 A There was, there were people that had just shown up at  
10 the site. I had gotten word that there were people there  
11 requesting access to the barge, but not necessarily showing  
12 proof or ID, and it was disregarded.

13 Q And who told you this?

14 A I security personnel.

15 Q So, somebody showed up without proof that they owned the  
16 barge and wanted to go in and look at it; is that correct?

17 A Somebody showed up and said they wanted to see the barge.  
18 No proof, no, no real rationale as to why.

19 This is a large facility. We get people all the  
20 time trying to come into the property and see things that are  
21 inappropriate. So, we have security there that prevents  
22 unauthorized access.

23 Q And prior to this person showing up, were you aware of a  
24 letter that had been sent to your attorneys from Mr. Sulzer's  
25 attorney requesting to permission to retrieve the barge?

J. Quadrozzi, Jr. - Direct / Paykin

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1 A I don't, I was told about a letter. I don't think it was  
2 prior. I think it was afterwards that a letter was sent, but  
3 again, the date is not clear. But I do remember a letter  
4 being sent to the attorney somewhere thereafter.

5 Q Mr. Quadrozzi, do you have any experience as a welder?

6 A Yes.

7 Q And could you describe that for me?

8 A Describe welding?

9 Q Your experience as a welder.

10 A I, I've, I've been around steel and done welding my whole  
11 life. My father was a welder, truck body builder. My  
12 grandfather was a blacksmith when he came to this country.

13 Q And what's your experience with boats and ships?

14 A I've been around boats my whole life. On the water my  
15 whole life. I've run a 500 some-odd-foot bulk carrier for the  
16 last 25 years in the same area of Brooklyn.

17 Q And to your knowledge, if the welding on a ship or barge  
18 is done improperly, does that have any impact on the corrosion  
19 that the salt water causes?

20 A Certainly.

21 Q Did you ever have a chance to inspect the welding on the  
22 ADA?

23 A No. No reason to.

24 Q Did anybody ever contact you and ask you to check the ADA  
25 for electrolysis --

J. Quadrozzi, Jr. - Direct / Paykin

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1 A No.

2 Q -- reactions?

3 Did anybody ever contact you and ask you to check  
4 the ADA to make sure it had anodes on it?

5 A No.

6 Q Have you seen, in your experience with ships and boats,  
7 have you seen corrosion caused by salt water and electric  
8 reactions?

9 A Yes.

10 Q And to your knowledge, is a rope an insulator against the  
11 corrosion?

12 A A hundred percent.

13 Q And to your knowledge, are the bumpers between the barges  
14 and insulator against corrosion?

15 A Yeah.

16 Q And to your knowledge, are the rubber tires between the  
17 barges an insulator against corrosion?

18 A Yes.

19 And also, to point out that the pier itself is an  
20 insulator against corrosion. As this pier was under repair,  
21 it was not even connected to the land. In fact, that was some  
22 of the early work that CDS did, was -- when they first arrived  
23 is, they cut some of the broken concrete away from the land  
24 and disconnected the pier from the land.

25 (Continued on following page.)

Quadrozzi - Direct/Mr. Paykin

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1 BY MR. PAYKIN:

2 Q Do you have a claim against CDS Marine for leaving this  
3 barge on your property?

4 A Yes, I did.

5 Q And, as such, do you have a claim against the equipment  
6 that was on the barge which was CDS Marine's?

7 A Yes; we did we put a claim against the equipment.

8 Q And what equipment was on that barge besides the crane?

9 A Well, are we talked about the ADA.

10 Q Yes?

11 A The ADA had a crane and it had a concrete pumping system  
12 inside and I don't know anything else of significance.

13 Q Is a concrete pumping system of value to you?

14 A Sure. Could be what we would have used to repair the  
15 facility.

16 MR. PAYKIN: I have no further questions.

17 THE COURT: Mr. Maloney.

18 CROSS-EXAMINATION

19 BY MR. MALONEY:

20 Q Good afternoon.

21 You just testified that you had a claim against  
22 CDS for money they owed you; is that correct?

23 A Yes.

24 Q Did you file a Notice of Claim in the bankruptcy  
25 proceeding in CDS's bankruptcy?

1 A My lawyer was handling it, I don't know exactly the  
2 procedure that he did.

3 Q Do you recall whether you owed CDS any money?

4 A No, I didn't owe CDS any money.

5 Q Are you aware there was you were listed as a creditor in  
6 the bankruptcy petition Gowanus Industrial Park was listed as  
7 a creditor?

8 A I know that they had submitted some invoices for work  
9 that was never done.

10 Q Were you aware --

11 I meant to say, "debtor." Were you aware that  
12 you were listed on the bankruptcy petition as a debtor to CDS  
13 in the amount of \$27,000?

14 A I don't recall. Like I said, I know that they had  
15 submitted some invoices for work they didn't do.

16 Q Okay. Now, you testified earlier that these barges were  
17 breaking away and they became a problem?

18 A Mm-hmm.

19 Q So, you or your people re-moored them.

20 So, you put the cables and ropes on them to  
21 moor them; is that correct?

22 A Several times, because the material that was on the barge  
23 was were old ropes and old cables, so they would break free or  
24 loosen and we would have to keep refastening them.

25 Q The outer most barge the ADA that was moored to the next

1 barge by rope or cable?

2 A All of them were moored together by rope.

3 Q Where were the cables?

4 A Cables would be on the winch that was holding the barge  
5 closest to the dock and the other barges were attached to each  
6 other.

7 Q And, the other barges that were attached to that, were  
8 you attached only by rope or by a combination of rope and  
9 cable?

10 A They were attached by ropes.

11 Q What about any cable, were any cables out?

12 A I answered that already, it was cable.

13 Q I understand. The cable on the inside?

14 A That was on the dock.

15 Q My question is, was there any cable between the dock and  
16 the outer barges?

17 A I answered that question.

18 THE COURT: Answer it again. If there is a reason  
19 that you should not answer, Mr. Quadrozzi, your lawyer will  
20 make an objection known "as asked and answered." I will rule  
21 on the objection, your job here is to answer the questions  
22 that are asked of you unless instructed otherwise.

23 Do you understand?

24 THE WITNESS: Okay.

25 THE COURT: You roll yours eyes and smirk, so there

1 is a record of it, is there something about the instruction  
2 you don't understand.

3 THE WITNESS: No; I said, "I understand."

4 THE COURT: Very good. Good.

5 BY MR. PAYKIN:

6 Q The question was: Were there any cables connecting the  
7 outer barges to one another?

8 A Not that I'm aware of, no.

9 Q Now, you said that the winch was on the dock, right?

10 A No.

11 Q Where was the winch?

12 A On the barge against the dock.

13 Q What powered the winch?

14 A Diesel or gasoline powered motor.

15 Q Did it have any electrical battery on it?

16 A To start it, yes.

17 Q And you said that the wires connecting the inner most  
18 barge were connected to wooden pilings, correct?

19 A Yes.

20 Q Did those have metal bolts on them?

21 A Yes.

22 Q Could an electrical pathway by virtue of the metal  
23 components in the pilings?

24 A No.

25 Q How could you be sure?

Quadrozzi - Cross/Mr. Maloney

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1 A Because the rope was tied to the wood and not the bolts.  
2 Wood is not a conductor of electricity.

3 Q You said "rope," but earlier you said it was wire which  
4 was --

5 A The fasteners.

6 Q The fasteners were made out of metal?

7 A The fasteners that were wire.

8 Q Okay. So they were connected to the wood?

9 A Yes.

10 Q Which had metal bolts on the side of it?

11 A There were metal bolts in the wood not touching the  
12 cable.

13 Q How do you know he didn't touch the cable at any time?

14 A Because I would look at it.

15 Q So, you regularly inspected this yourself?

16 A From time to time, yes, to make sure it was secure.

17 Q Did you ever use one of those devices called a potential  
18 meter?

19 A No.

20 MR. MALONEY: I have nothing further.

21 THE COURT: Any redirect.

22 MR. PAYKIN: No, Your Honor.

23 THE COURT: I think I had a couple of follow-up  
24 questions and, of course, Counsel, you will get a chance to  
25 follow up.



Quadrozzi - By the Court

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1 I was unclear on the timing of the incident  
2 with a security guard turning somebody away.

3 Do you know what I'm referring to?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Was that before or after you were  
6 aware that somebody had contacted your attorney about the ADA?

7 THE WITNESS: That was before.

8 THE COURT: All right. And how did you come to have  
9 an attorney representing you about the ADA?

10 THE WITNESS: Well, the attorney was representing me  
11 against CDS Marine.

12 THE COURT: I see.

13 THE WITNESS: So then when the ADA people got  
14 involved, then, they were handling that.

15 THE COURT: I understand. You said that rubber  
16 tires insulate against corrosion; is that correct?

17 THE WITNESS: Yes.

18 THE COURT: Am I misunderstanding? I thought  
19 corrosion was what happens below the water and oxidation is  
20 what happens in the air, correct?

21 THE WITNESS: No. No. Oxidation is just the  
22 reaction of the air with the metal that creates corrosion.  
23 What they're referring to is it electrolysis which is the  
24 electricity that travels either through the water or from the  
25 land to the boat.

Quadrozzi - By the Court

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1 THE COURT: I see.

2 THE WITNESS: So, what they're trying to clarify is  
3 a means for more rapid electrolysis to get to the barge  
4 because of a wire as opposed to what would normally just be in  
5 the water.

6 THE COURT: And, so, the rubber tires prevent  
7 corrosion how?

8 THE WITNESS: Well, if the barge was tied to another  
9 barge and there were either ropes or tires between them there  
10 is no conductivity.

11 THE COURT: It doesn't contact, I understand.

12 THE WITNESS: Okay.

13 THE COURT: Your claim against the equipment on the  
14 barge, was that -- do you know -- did you seek money from CDS  
15 or did you have an action pending somewhere seeking title to  
16 the equipment?

17 THE WITNESS: We were seeking money from CDS because  
18 this is a rental facility.

19 THE COURT: Okay. It was a claim for money?

20 THE WITNESS: At some particular point they wouldn't  
21 remove their material, a long time passed, and we started  
22 charging them to encourage them to leave or keeping the stuff  
23 there.

24 THE COURT: Anything else, folks?

25 MR. PAYKIN: No.

Quadrozzi - By the Court

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1 MR. MALONEY: No.

2 THE COURT: Thank you. You're excused.

3 (Witness leaves the witness stand.)

4 THE COURT: Mr. Paykin any further witnesses.

5 MR. PAYKIN: No, Your Honor.

6 THE COURT: Any rebuttal.

7 MR. MALONEY: No, Your Honor.

8 THE COURT: The evidence is closed.

9 Now, Counsel, do you wish to argue today? Do  
10 you wish to submit follow-up memoranda? How do you prefer to  
11 proceed?

12 MR. PAYKIN: I think the best would be to get the  
13 transcript and do the follow-up memoranda.

14 THE COURT: How soon did you do want to do it.

15 MR. PAYKIN: The first is how soon we can get the  
16 transcript. I will contact the court reporter.

17 THE COURT: Send me a letter by next week proposing  
18 a briefing schedule.

19 Anything further that we can accomplish today.

20 MR. PAYKIN: No.

21 MR. MALONEY: No.

22 THE COURT: Thank you, all.

23 (WHEREUPON, the proceedings were adjourned.)

24 \* \* \*

25

I N D E XW I T N E S SP A G E

C A P T A I N R O B E R T H E N R Y

D I R E C T E X A M I N A T I O N

B Y M R. M A L O N E Y

3

C R O S S - E X A M I N A T I O N

B Y M R. P A Y K I N

10

R E D I R E C T E X A M I N A T I O N

B Y M R. M A L O N E Y

13

A R T H U R H. S U L Z E R

D I R E C T E X A M I N A T I O N

B Y M R. M A L O N E Y

16

C R O S S - E X A M I N A T I O N

B Y M R. P A Y K I N

46

D I R E C T E X A M I N A T I O N (C o n t i n u e d)

B Y M R. M A L O N E Y

64

C R O S S - E X A M I N A T I O N (C o n t i n u e d)

B Y M R. P A Y K I N

65

E X A M I N A T I O N B Y

T H E C O U R T :

66

C A P T A I N

J O S E P H A H L S T R Ö M

D I R E C T E X A M I N A T I O N

B Y M R. M A L O N E Y

69

V O I R D I R E

B Y M R. P A Y K I N

73

D I R E C T E X A M I N A T I O N (C o n t i n u e d)

B Y M R. M A L O N E Y

75

C R O S S - E X A M I N A T I O N

B Y M R. P A Y K I N

76

J O H N Q U A D R O Z Z I , J R.

D I R E C T E X A M I N A T I O N

B Y M R. P A Y K I N

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C R O S S - E X A M I N A T I O N

B Y M R. M A L O N E Y

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Counterclaim Defendant's  
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